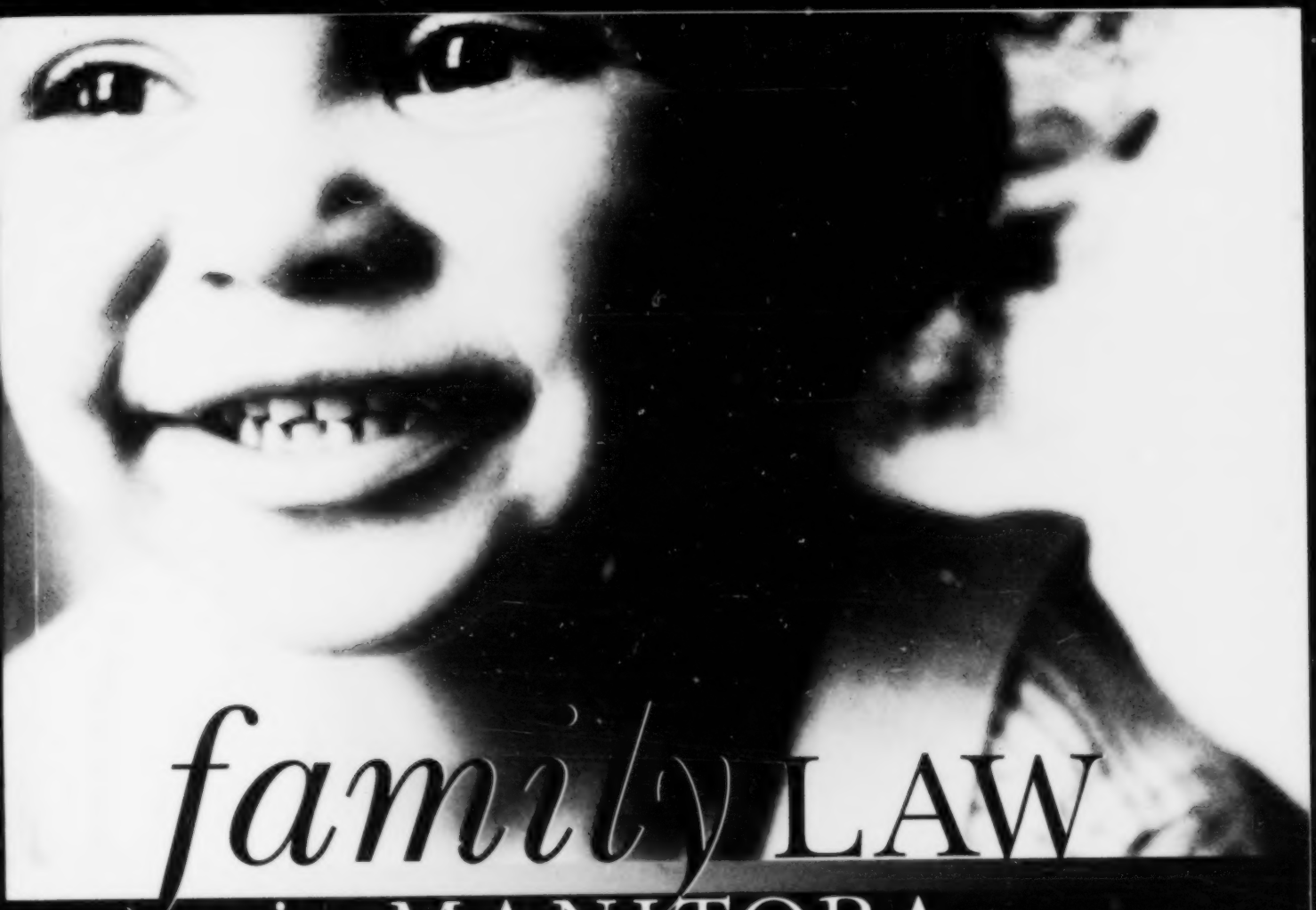

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2005

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2005

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Family Law in Manitoba *is also available on the Internet, on the Manitoba Justice website at*
www.gov.mb.ca/justice/family/familyindex.html (English)
www.gov.mb.ca/justice/family/frenchbooklet2004/index.fr.html (French)

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CHAPTER 1

LEGAL INFORMATION AND LEGAL ADVICE

This booklet contains an overview of family law and the legal system in Manitoba as of March, 2005 and is intended to provide a basic understanding of family law for anyone who wants or needs to know about it. Chapter 2 outlines the court system, court procedures and alternatives to court. Chapters 3 through 15 each cover a major legal topic in a general way without focusing on the rights of any particular family member or kind of family.

Throughout the booklet you will find names, addresses, phone and fax numbers, e-mail addresses and websites you may need. These are summarized in Chapter 16.

It is important to understand that this booklet provides general information only. How the law affects any person will depend on the facts of each case. Also, family law changes from time to time as both federal and provincial governments make new laws (*legislation: acts* and *regulations*) and the courts make decisions in cases that affect the law (the *common law*). If you have a legal problem or need specific advice, it is best to consult a lawyer who practises family law.

LEGAL ADVICE

How to Find a Lawyer

Lawyers are listed in the Yellow Pages of the phone book, and it may be helpful to ask family or friends to recommend a lawyer with a family law practice. **The Law Phone-in and Lawyer Referral Program** operated by the Community Legal Education Association (CLEA) will refer you to a lawyer who practises family law and who will give you a free half-hour preliminary consultation. After the consultation, you do not have to hire the lawyer if you are not comfortable with him or her.

Community Legal Education Association
501 - 294 Portage Avenue
Winnipeg MB R3C 0B9
Phone: 943-2305
Toll free: 1-800-262-8800
Website: www.communitylegal.mb.ca

Legal Aid

If you cannot afford to hire a lawyer, Legal Aid Manitoba may be able to help. All or part of your legal costs may be paid, depending on your financial position, the type of case and the merits of the case. Applications may be made at the Legal Aid Manitoba Winnipeg Drop-In Centre in Room 416-294 Portage Avenue and at any of the Community Legal Aid offices located throughout Manitoba, or through a private lawyer participating in the plan.

If you are employed, the application will cost $25. A person receiving help from legal aid Manitoba may choose a legal aid staff lawyer or any private lawyer who participates in the Manitoba legal aid plan to act on his or her behalf. If a person needs a lawyer for a case outside Manitoba, it may be possible for Legal Aid Manitoba to help obtain such a lawyer.

Legal Aid Manitoba also gives advice, information and legal assistance on a drop-in basis through staff lawyers at the Legal Aid Manitoba Drop-In Centre in Winnipeg and at the Community Legal Aid offices outside Winnipeg. Eligible persons needing formal legal representation will be referred to a staff lawyer or a participating private lawyer.

If you have any questions about Legal Aid Manitoba services, including the hours of operations for the drop-in service, you can call 985-8500 in Winnipeg or toll free outside Winnipeg at 1-800-261-2960 or visit Legal Aid Manitoba's website at www.legalaid.mb.ca.

All Legal Aid Manitoba offices, and their telephone numbers, are listed in Chapter 16, Important Addresses and Phone Numbers.

LEGAL INFORMATION

Only a lawyer can give legal advice. However, you can contact other resources to get legal information or to update the information in this booklet.

- The Law Phone-in and Lawyer Referral Program will give callers legal information over the phone, free of charge.

  Community Legal Education Association
  501 - 294 Portage Avenue
  Winnipeg MB R3C 0B9
  Phone: 943-2305
  Toll free: 1-800-262-8800
  Website: www.communitylegal.mb.ca

- Legal Aid Manitoba's drop-in service provides legal information, also free of charge, to persons going to the Winnipeg Drop-In Centre or the Community Legal Aid Centres.

  Legal Aid Manitoba
  416 - 294 Portage Avenue
  Winnipeg MB R3C 0B9
  Phone: 985-8500
  Toll free: 1-800-261-2960

- To buy copies of Manitoba government legislation, contact:

  Statutory Publications
  200 Vaughan Street
  Winnipeg MB R3C 1T5
  Phone: 945-3101
  Fax: 945-7172
  Toll free: 1-800-321-1203

- Manitoba laws (statutes or acts and regulations) can be found on the Internet at www.gov.mb.ca/laws.

- Federal government legislation is also available on the Internet at the Justice Canada website. Go to: www.canada.justice.gc.ca and click on *laws*.

- To buy copies of federal government legislation, contact the federal government department that published the act or regulation.

- For other federal government publications, contact:

  Publishing and Depository Services
  Public Works and Government Services Canada
  Ottawa ON K1A 0S5
  Toll free:1-800-661-2868

- The Family Law Branch may, from time to time, prepare information sheets updating the addresses and phone numbers in this booklet and advising of any new provincial legislation. These updates will be available from:

  Family Law Branch
  Manitoba Justice
  705 - 405 Broadway
  Winnipeg MB R3C 3C6
  Phone: 945-0268
  Fax: 948-2004
  Toll free: 1-800-282-8069 (Ext. 0268)

- More information may be available on the Manitoba government's website: www.gov.mb.ca. Check the Manitoba Justice site for family law updates.

CHAPTER 2

THE COURT SYSTEM AND PROCEDURES AND ALTERNATE DISPUTE RESOLUTION

LEVELS OF COURT

There are three levels of court in Manitoba that deal with family cases: the Provincial Court, the Court of Queen's Bench (Family Division) and the Court of Appeal.

The Provincial Court can hear some types of family cases, but only in northern and some rural areas where the Court of Queen's Bench (Family Division) does not have exclusive authority to hear family cases. Only the Court of Queen's Bench (Family Division) can deal with applications for divorce, division of family property and adoption.

The Court of Queen's Bench (Family Division) is a unified family court that hears all family matters throughout Manitoba. The judges of the Family Division specialize in family law. The Family Division was created so the court could respond more sensitively to the needs of people involved in family disputes. Family Conciliation, a provincial government service staffed by professional counsellors, works with the court to help families resolve custody and access issues.

The Court of Appeal hears appeals from people who are not satisfied with a decision of the Provincial Court or the Court of Queen's Bench.

From time to time the Supreme Court of Canada will consider appeals from the Manitoba Court of Appeal on family law issues. The person seeking to appeal must first obtain permission *(leave)* from the Supreme Court of Canada.

A GENERAL DESCRIPTION OF FAMILY DIVISION PROCEDURES

The following description of court procedures in the Court of Queen's Bench (Family Division) is very general and applies mainly to separations and divorces. Court procedures in other family matters, such as child protection and adoption, are different in some respects, and you should also read Chapters 12 and 13 for more information on how the court system operates in those cases.

⚖ Starting a Proceeding

People involved in a legal dispute are called the parties. Anyone who wants the assistance of the court must ask for it by applying to court. This is done by filing specific documents in the court office. Once these documents have been filed, the court proceedings have started. The document that begins court proceedings is usually called a *petition*, an *application*, or sometimes a *statement of claim*. The party who files the documents is called the *petitioner*, the *applicant*, or sometimes the *plaintiff*.

Notice

Other parties involved in the dispute (such as a spouse or a parent) usually must be notified of the application *(served)* so that they will also have an opportunity to present their position to the court. This is usually done in a document called an *answer*. Sometimes, where a party cannot be found to be served, the court will allow the case to proceed anyway. Usually in these cases the court will require some kind of alternative notification, for example a notice in a local newspaper *(substitutional service)*.

Uncontested Proceedings

If the other party (usually called the *respondent*) does not file an answer to the application within the time the court allows, the hearing may proceed without the respondent. The applicant may submit documents to the court, for example, financial information. The applicant will testify under oath or affirmation and may call witnesses to testify on his or her behalf. These witnesses may include the respondent, who may be required to attend court by a *subpoena*. At the conclusion of the hearing, the court will make an order.

Interim Orders

Family law cases often take many months and sometimes even years to be completed. Many issues need to be resolved much earlier at an *interim hearing*, at least on a temporary basis (Ex: parenting arrangements, child support and financial disclosure). For this reason, either party may make a court application *(a motion)* for a temporary order *(interim order)* at any time after court proceedings have been started. The applicant must serve the motion documents on the other party unless the applicant can convince the judge that serious harm would result if notice were given to the other side.

The parties give their evidence by means of *affidavits*. An affidavit is a document in which a person sets out the facts relevant to the motion and swears, or solemnly affirms, the truth of the statements. The affidavits must not contain irrelevant or purely inflammatory statements. If they do, the court may reject them or parts of them and penalize the party who filed them.

A judge reviews the filed documents, and the parties can argue their cases before the judge at an appointed hearing time. The parties usually do not present oral evidence at the interim hearing.

Cross-examinations on Affidavits

Before the hearing of an interim motion, anyone who made an affidavit may be questioned under oath or affirmation by the opposing party or his or her lawyer. This *cross-examination* takes place outside court, usually in a lawyer's office. A court reporter is present and records all the questions and answers and puts them in a document *(transcript)*, which is given to the judge before the interim hearing.

Consent Orders

If at any time in the proceeding, the parties can agree on any issues in their dispute, the court can issue a *consent order* without the parties having to attend for a court hearing.

Pre-trial Procedures

Before the final court hearing *(trial)*, there are several court procedures which are intended to ensure that the parties are ready for the trial and to resolve as many issues as possible to shorten the trial or eliminate the need for it altogether.

- Case Management

  Most family proceedings in Winnipeg will come under the court's case management program. The purpose of case management is to get cases dealt with as efficiently as possible, to reduce the costs involved and to encourage the parties to find their own mutually acceptable solutions to their family law issues. The parties and their lawyers must attend meetings with a judge *(case conferences)* to discuss the case. The judge tries to help the parties settle their dispute, or as many issues as possible. If a trial is necessary, the judge will require the parties to exchange information and do whatever else is needed to prepare the case for trial.

- Pre-trial Conferences

  In all cases that do not come under the case management program, the parties and their lawyers must attend at least one meeting with a judge before a trial takes place. This *pre-trial conference* is like a case conference and follows many of the same rules — the judge tries to get the parties to reach agreement to resolve the case, or at least narrow the issues for trial. The judge also makes sure the case is ready to proceed to trial, so that there are no unnecessary delays or surprises once the trial starts.

- Examinations for Discovery

  Often a party will need more information about the claims being made by the other party. People involved in a legal dispute can require the other party to provide relevant documents and to come to an *examination for discovery*, which is like a cross-examination. The examination for discovery takes place outside court, usually at a lawyer's office. The party requiring the examination can ask the other party questions about the case, for example, the party's plans for caring for the children and his or her financial situation. A court reporter records all the questions and answers, and the printed record *(transcript)* may be used at the trial.

The Trial

At the final court hearing, each party will have the opportunity to testify under oath or affirmation and call witnesses to testify on his or her own behalf. Everyone who testifies at a court hearing may also be cross-examined by the other party or his or her lawyer. After all the evidence is given, each party can make a final presentation to the court *(argument or submission)*. Each party summarizes the evidence and the law and tries to convince the judge that his or her position is the right one.

After the hearing, the judge will consider all the evidence, which includes the testimony given in court, any out-of-court examinations filed by the parties and any documents accepted by the judge as evidence during the trial. The judge will also review any legislation or case law submitted by the parties. The judge will make a decision and give it to the parties, either orally in court or in a written document *(reasons for decision)* usually issued at a later time.

The parties or their lawyer(s) are responsible for preparing a written order in the proper form for the court to sign. Each party should receive a copy of the signed order.

Particular Proceedings

- Uncontested Matters

  Where a petition is not opposed, the petitioner can submit his or her evidence in affidavits and does not have to appear in court. After reviewing the documents, the judge can grant the orders requested, or

order that additional affidavit evidence be given, or order that evidence be given in court on some or all of the issues.

- Variations

Parties sometimes want a final order to be changed. For example, the party with whom the children reside may need more money for the children. (See Chapter 7 for more information on child support and varying child support orders.) If the other party agrees to the change, the parties can obtain a consent order from the court without having to appear in court. If the other party does not agree, the party wanting the variation will have to file an application in court with an affidavit explaining why the change should be made. The other party may file an affidavit in reply. Usually, the hearing will proceed like a contested interim motion. The judge will make a decision based on the affidavits filed, and any cross-examinations, but there will not be a trial with testimony given in court.

Appealing a Court Order

A party who is unhappy with the court's decision on any matter may appeal that decision to a higher court. Appeals must be filed within certain time limits set out in the legislation or court rules that apply to the case. For example appeals of orders made by a judge under *The Family Maintenance Act* of Manitoba must be filed within 30 days of the filing of the order with the court. Appeals of orders under the federal *Divorce Act* must be filed within 30 days after the court made the order. It is important to get legal advice quickly if you wish to appeal an order.

Court Offices

A list of court offices appears in Chapter 16, Important Addresses and Phone Numbers.

More information about Manitoba's court system is available on the Internet at www.manitobacourts.mb.ca/.

ALTERNATE DISPUTE RESOLUTION

Mediation

Separating spouses and parents should consider mediation for resolving their difficulties before plunging into what may be a very costly and hurtful court battle. A *mediator* is a neutral third party who helps people reach their own agreement. Mediation is not appropriate for every family, for example, where there is family violence or a power imbalance between the parties.

Mediation on parenting issues is available at no cost through trained mediators at Family Conciliation, a provincial government service (see Chapter 5, Custody). Family Conciliation also offers Comprehensive Co-Mediation through its Winnipeg office. This is where parents mediate all of the issues arising from their separation, including support and the division of family property. There are also social workers, psychologists, lawyers and other persons in the private sector who offer mediation on parenting and financial issues on a fee-for-service basis. Many of these people advertise in the Yellow Pages. You may also contact Family Conciliation, Family Mediation Manitoba and Family Mediation Canada for a list of people who do mediation. There are no laws requiring people who practise as mediators to have any training or qualifications.

Before retaining a mediator, it is important to ask about the person's qualifications, for example, whether the mediator has been certified by Family Mediation Canada.

For further information, contact:

Family Conciliation
2nd Floor 379 Broadway
Winnipeg MB R3C 0T9
Phone: 945-7236
Fax: 948-2142
Toll free: 1-800-282-8069 (Ext. 7236)
Website: www.gov.mb.ca/fs/childfam/family_conciliation.html
Brandon: 726-6336
Toll free: 1-800-230-1885
Dauphin: 622-2318
Thompson: 677-6497
The Pas: 627-8221
Flin Flon: 687-1730

Family Mediation Canada
528 Victoria Street North
Kitchener ON N2H 5G1
Phone: 1-519-585-3118
Fax: 1-519-585-3121
E-mail: fmc@fmc.ca
Website: www.fmc.ca

Family Mediation Manitoba
P.O. Box 2369
Winnipeg MB R3C 4A6
Website: www.fmm.winnipeg.mb.ca

Collaborative Family Law

Some lawyers in Manitoba provide collaborative family law services. This is where each party hires a lawyer to act as an advisor and the parties negotiate their issues with their lawyers by their sides. This allows the parties to try to settle their own issues, but with legal protection.

The process may also include other professionals, such as therapists or financial experts.

The parties must be prepared to co-operate and agree not to go to court. If an agreement cannot be reached, both lawyers must withdraw. In April of 2004, Legal Aid Manitoba began a pilot project in Collaborative Family Law. Where both parties qualify for Legal Aid, they will each be referred to one of two specialized Legal Aid offices, where their lawyers will use the collaborative law process. If only one of the parties qualifies for Legal Aid, they can still use the collaborative law process if both agree. For more information, contact

Legal Aid Manitoba
Collaborative Law Office
607 – 294 Portage Avenue
Winnipeg MB R3C 0B9
Phone: 1-204-985-9732

For information on private lawyers who do collaborative law, contact Family Mediation Manitoba, CLEA's Law Phone-in and Lawyer Referral Program (see Chapter 1 for contact information) or check the Yellow Pages.

Arbitration

Another way of dealing with a dispute outside court is arbitration. An *arbitrator* is an independent person, often a lawyer, who the parties have agreed can hear and decide their dispute. The arbitration process is similar to court but simpler and less formal. Sometimes when people enter into a separation agreement (see Chapter 4, Separation and Divorce) they agree that if either want a change in the agreement in the future, they will use arbitration rather than go to court.

CHAPTER 3

MARRIED AND COMMON-LAW RELATIONSHIPS

GETTING MARRIED

Legal marriage gives status to individuals as spouses, resulting in certain rights and obligations. The law places some restrictions on who can enter into a valid marriage. There are also rules about how a valid marriage takes place.

Who Cannot Legally Marry?

- **Closely related persons:** A person may not marry his or her grandparent, parent, child, grandchild or brother or sister.
- **Persons certified as mentally disordered** cannot marry unless a psychiatrist certifies in writing that they are able to understand the nature of marriage and its duties and responsibilities.
- **Persons under 18 years of age** *(minors)* cannot marry unless:

  Where the minor is over 16:

  - both of the parents give their written consent, or
  - where the parents are separated, the parent with whom the minor is living gives written consent, or
  - a judge gives written consent, or
  - where a child care agency or the director of Child and Family Services is the child's guardian, the director or a judge gives written consent, or
  - where one parent is dead, the other parent gives written consent, or
  - where both parents are dead, the child's guardian gives written consent

  Where the minor is under 16:

  - only if a judge gives written consent to the marriage.

Anyone of any age who has been divorced, or whose spouse has died, may remarry without the consent of any other person.

As of September 16, 2004, persons of the same gender are able to marry in Manitoba. In a court decision issued that date, it was found that the opposite sex requirement in the common law definition of marriage was of no legal force and effect, because it violated the equality rights guaranteed by the *Canadian Charter of Rights and Freedoms*. The definition of marriage was changed in Manitoba to the voluntary union for life of two persons to the exclusion of all others. Similar decisions have been made in a number of other provinces and in the Yukon Territory.

How a Valid Marriage Takes Place

- **Marriage licence**

  The couple must first get a marriage licence, unless they both regularly attend a place of worship and banns declaring their intention to marry have been proclaimed during a religious service. Marriage licences may be obtained from authorized businesses throughout the province. In addition, in Winnipeg licences can be obtained at Vital Statistics, at 254 Portage

Avenue. Outside Winnipeg, you can also apply at the nearest office of either Manitoba Health or Manitoba Family Services and Housing.

- The couple must apply together for the marriage licence. It must be obtained at least 24 hours before their wedding unless the person performing the ceremony is persuaded that the time period should be waived because of exceptional circumstances. The wedding must take place within three months after the licence is issued.

■ Ceremony

There must be a ceremony, either religious or civil. A civil ceremony is a non-religious rite and must be performed by a *marriage commissioner*. Vital Statistics has a list of marriage commissioners who are authorized by law to perform civil marriages in Manitoba. A marriage ceremony, whether religious or civil, may take place anywhere in Manitoba—for example, in a church, private home, park or hotel. At least two witnesses must be present.

For further details about the requirements that must be met before entering into a marriage and the relationships that prevent a legal marriage, contact:

Vital Statistics Agency
254 Portage Avenue
Winnipeg MB R3C 0B6
Phone: 945-3701
Service en français: 945-5500
Fax: 948-3128
Toll free: 1-800-282-8069 (Ext. 3701)
E-mail: vitalstats@gov.mb.ca
Website : www.gov.mb.ca/cca/vital

UNMARRIED OR COMMON-LAW RELATIONSHIPS

Each chapter of this booklet discusses a different area of family law and should be reviewed for more information on the legal remedies available to common-law partners and married spouses. Please remember this booklet provides general information only. How the law affects any person will depend on the facts of the particular case. If you have a legal problem or need specific advice, it is best to consult a lawyer who practises family law.

Some people think that after a couple lives together for a certain number of years, they become legally married, although they have never formally married. This is not true. These kinds of relationships, often called common-law relationships, are not the same as legal marriages. However, the law does give unmarried partners, or common-law partners, in certain circumstances, many of the same rights and responsibilities that married couples have. These rights and responsibilities are given to both same-sex and opposite-sex common-law couples.

⚖ When Do Couples Become Common-Law Partners?

People who live together in a conjugal or marriage-like relationship are often referred to in Manitoba family laws as common-law partners. There is no single definition of common-law partners or a common-law relationship in Manitoba law. Some laws say that common-law partners must live together for a specified period of time before each partner acquires certain rights or responsibilities. Other laws require that the two people must intend to live together in a conjugal relationship on a permanent basis, but do not set out a specific length of time. However, every Manitoba law that includes a definition of

common-law partner, includes couples who have registered their relationship with the Vital Statistics Agency, no matter how long the registered couple has lived together. It is important to look at the particular law to find out whether or not a couple qualify as common-law partners under that law.

Registering a common-law relationship is completely voluntary. Common-law couples are not required to register. A common-law relationship may be registered by completing and filing a simple form with the Vital Statistics Agency. For information on registering a common-law relationship, the fees for registering and certificates proving registration, contact:

Vital Statistics Agency
254 Portage Avenue
Winnipeg, Manitoba R3C 0B6
Phone: 945-3701
Service en français: 945-5500
Toll free: 1-800-282-8069 (Ext. 3701)
Fax: 948-3128
E-mail: vitalstats@gov.mb.ca
Website: www.gov.mb.ca/cca/vital

In the past, some Manitoba laws only recognized common-law relationships between opposite-sex partners and excluded gay and lesbian relationships. In 2001, Manitoba passed a law that changed 10 provincial acts to ensure that both opposite-sex and same-sex common-law partners were treated equally under those acts. The 10 Manitoba acts that were changed are:

The Family Maintenance Act (non-divorce support)
The Dependants Relief Act (support from estates)
The Civil Service Superannuation Act (civil servant pensions)*
The Legislative Assembly Act (pensions for MLAs)*
The Pension Benefits Act (provincially regulated pensions)*
The Teachers' Pension Act (teachers' pensions)*
The Fatal Accidents Act (death benefits)
The Manitoba Public Insurance Corporation Act (death benefits)
The Workers Compensation Act (death benefits)
The Queen's Bench Act (the court that hears support applications)

Changes to most of these laws came into effect on July 6, 2001. The changes to the four acts dealing with pensions (marked * in the above list) have been in effect since January 1, 2002. Another law, called *The Charter Compliance Act*, amended 56 different Manitoba laws to bring them into compliance with the *Canadian Charter of Rights and Freedoms*, by treating opposite sex common-law partners and same-sex common-law partners the same way in such things as adoption rights and conflict of interest requirements. Most of *The Charter Compliance Act* came into effect on August 1, 2002, and the balance has been in effect since January 1, 2003.

Here are some examples of how common-law partners are treated under Manitoba law. Common-law partners who have:

- registered their common-law relationship with the Vital Statistics Agency or
- lived together for at least one year and have a child together or
- lived together for at least three years if there are no children of the relationship

have all the same rights under *The Family Maintenance Act* as legally married spouses, including the right to seek spousal support.

A common-law partner who is seeking protective relief under *The Family Maintenance Act* does not need to show the relationship has lasted any particular time. Under *The Domestic Violence and Stalking Prevention, Protection and Compensation Act* (as discussed more fully in

Chapter 10, Family Violence), people who have lived together in a family, spousal or intimate relationship are able to seek relief from domestic violence. Anyone who is being stalked and who fears for his or her safety is able to seek relief under this act, and it will not be necessary to show that there has been a relationship between the parties.

Before June 30, 2004, Manitoba's family laws dealing with property did not apply to people in common-law relationships; these laws only applied to married spouses. However, on June 30, 2004, a new law came into effect that changed this. *The Common-Law Partners' Property and Related Amendments Act* changed the name of *The Marital Property Act* to *The Family Property Act* and it extended this and many other property laws to common-law partners who have either registered their relationship with the Vital Statistics Agency or who have lived together for a specified period of time. *The Homesteads Act* also now applies to common-law partners. See Chapter 9, Property, and Chapter 15, Death in the Family, for more information on family property laws.

A person may be entitled to a share of his or her common-law partner's pension credits under the Canada Pension Plan or under *The Pension Benefits Act* of Manitoba. In the case of a pension governed by *The Pension Benefits Act*, if the common-law partners separated before June 30, 2004, the pension-owning partner must have filed a declaration with the pension plan administrator, opting in to the sharing provision, for the pension to be shared.

Unmarried partners may have rights to information about partners' pension plans under both the federal *Pension Benefits Standards Act, 1985* and *The Pension Benefits Act* of Manitoba. Both acts also may give a common-law partner rights to survivor's benefits on a partner's death.

Children born within marriage and those born to common-law partners have equal legal status and rights. *The Family Maintenance Act* gives unmarried parents certain rights respecting custody of their children. If the parents have lived together after the birth of their child, they have joint custody of the child unless a court orders otherwise. If the parents have never lived together after the child's birth, the parent with whom the child lives has sole custody, unless a court orders otherwise. *The Family Maintenance Act* also has provisions for determining the parentage of a child when this is in dispute. These provisions are discussed in Chapter 6, Parentage.

Court applications for custody of or access to children of common-law relationships are no different from applications involving children of married parents. The court's decisions are based on the best interests of the children involved.

Similarly, parents have equal responsibilities to support their children whether married to the child's other parent or not. Manitoba's *Child Support Guidelines* are equally applicable to unmarried parents and to those who are married.

THE RIGHTS AND DUTIES OF MARRIED SPOUSES/COMMON-LAW PARTNERS TO EACH OTHER WHILE LIVING TOGETHER

When spouses or common-law partners separate, the law sets out their rights and duties to each other, for example, how property is to be divided and who is to pay support and how much. Chapters 8 and 9 explain these rights and duties.

Even when a couple is still living together, they have certain legal rights and responsibilities to one another. Some of these are explained below.

Financial Support

The Family Maintenance Act of Manitoba states that both spouses or both common-law partners have a duty to financially support and maintain each other while living together. This duty can be met by earning income outside the home or by running the household. In both situations the spouses or partners equally contribute to the welfare of the family. The right to financial support includes the right to receive reasonable amounts for clothing and other personal expenses on a regular basis, and the right to spend this money without interference from the other spouse or common-law partner.

Financial Information

The Family Maintenance Act gives spouses or common-law partners the right to request and receive financial information from each other while they are living together. For example, a spouse or common-law partner is entitled to information such as copies of income tax returns and itemized statements of earnings, assets and liabilities. If this information is not provided when requested, the court can order the spouse or common-law partner to provide the information and pay the other spouse or partner a penalty of up to $5,000.

Property

Use of Family Assets

The Family Property Act of Manitoba says both spouses or both common-law partners have the same right to use and enjoy family assets. To qualify as common-law partners under *The Family Property Act*, a couple must have either registered their relationship with the Vital Statistics Agency or they must have cohabited in a conjugal relationship for at least three years. A family asset is property that is owned by one or both spouses or common-law partners and is used for family purposes such as shelter, transportation or recreation. Examples of family assets are the family home, household furniture and appliances, family car, summer cottage, lawnmower and gardening tools. However, one spouse or partner does not have the right to use the other's personal belongings (for example, clothing and other items that are not usually used by both of them).

The act does not prevent a spouse or common-law partner from selling or otherwise dealing with a family asset that is owned by him or her, unless such actions would seriously threaten the family's financial security or the asset involved is the family home.

The Family Home

The Homesteads Act gives special protection to the family home, or homestead, which can be a house, a farmhouse or a condominium. *The Homesteads Act* defines common-law partners as a couple who have either registered their relationship with the Vital Statistics Agency or who have lived together in a conjugal relationship for at least three years. Where the homestead is owned by one spouse or common-law partner alone, the other spouse or partner must consent in writing before the owner can sell, mortgage, rent for three years or more, or otherwise dispose of it.

Where the spouses or common-law partners live on a farm, the special protection applies to not only the farm dwelling but also up to 320 acres of land.

Where both spouses or both common-law partners are the registered owners of the family home, both must agree in writing to any sale, mortgage, rental or other transaction involving it. A spouse or common-law partner who has disposed of the homestead without the other spouse's or partner's consent may be liable to that spouse or partner for damages. The defrauded spouse or common-law partner may also be entitled to seek compensation from the Land Titles Assurance Fund.

- **Accounting and Equalization of Family Property**

  The Family Property Act gives spouses and common-law partners the right to apply at any time to the court for an accounting and equalization of family property. In the case of married spouses, this basically is property acquired by one or both of the spouses while they are married and living together. If a couple lives together for a time immediately before they marry, any property they acquire while they lived together is also included. For common-law partners, this is property acquired by one or both of them while they are cohabiting. To qualify as common-law partners under *The Family Property Act*, a couple must either have registered with the Vital Statistics Agency or have cohabited for at least three years. The court can order an accounting even if the parties are living together. See Chapter 9, Property, for further details.

- **Pensions**

  - *The Pension Benefits Act* of Manitoba applies to pension plans sponsored by an employer for employees in Manitoba. Every such pension plan must state that the pension benefits payable to a plan member who is either married or in a common-law relationship, will be in the form of a joint pension. This type of pension provides the spouses or common-law partners with a monthly pension guaranteed for the lives of both of them. To qualify as common-law partners under *The Pension Benefits Act*, a couple must have registered their relationship with the Vital Statistics Agency, or cohabited in a conjugal relationship for at least three years if either of them is married, or cohabited in a conjugal relationship for at least one year if neither of them is married.

    If a plan member, or his or her spouse or common-law partner dies after the member retires, the survivor is entitled to a survivor pension. Amendments to *The Pension Benefits Act* that have been introduced in the legislature but are not yet law, will provide that unless the member and his or her spouse or common-law partner are separated, the survivor will receive a survivor pension of at least 60 per cent of the original pension. This provides protection for surviving spouses and partners, because they are guaranteed a minimum pension income after the other dies. Spouses or common-law partners may give up this protection by completing and signing a waiver form.

    Employers must provide a yearly statement about the pension plan to every plan member. In addition, spouses or common-law partners of plan members are entitled to a copy of the statement if they request it. For more information about *The Pension Benefits Act*, contact:

    Pension Commission of Manitoba
    1004 - 401 York Avenue
    Winnipeg MB R3C 0V8
    Phone: 945-2740
    Fax: 948-2375
    Toll free: 1-800-282-8069 (Ext. 2740)

- The federal *Pension Benefits Standards Act, 1985* applies to most federally regulated pension plans (Ex: the airlines and railways) and provides similar protection to spouses and common-law partners. For more information about this federal legislation and other federally regulated pensions, contact:

  Office of the Superintendent of
  Financial Institutions of Canada
  255 Albert Street
  Ottawa ON K1A 0H2
  Toll free: 1-800-385-8647
  Website: www.osfi-bsif.gc.ca

CHAPTER 4

SEPARATION AND DIVORCE

THE DIFFERENCE BETWEEN SEPARATION AND DIVORCE

Spouses who have separated are still legally married, even if there is a court order of separation. Manitoba law covers separation matters between spouses or between common-law partners, such as parenting arrangements (custody and access), financial support for separated spouses and common-law partners or their children and division of property.

Federal law applies to married spouses who are seeking a divorce and is the same throughout Canada. When a court grants a divorce, the marriage is ended. The *Divorce Act* sets out how a divorce can be obtained. It also deals with matters related to divorce, such as parenting arrangements and financial support. The *Divorce Act* provisions on parenting arrangements and support are very similar to the provincial laws in these matters.

A court order or formal separation agreement is not required for spouses to separate — they may simply live separate and apart. However, particularly when there are children or questions of property or financial support, it is wise for separating spouses to have a written separation agreement or court order.

SEPARATION AGREEMENTS

Many couples settle all issues between them by entering into a written separation agreement. Through such an agreement, they can avoid court proceedings, or shorten existing proceedings, except the proceedings needed to obtain the divorce order to end their marriage. However, an agreement cannot change a parent's legal rights respecting custody of their children under *The Family Maintenance Act*.

A separation agreement will usually deal with matters such as:

- parenting arrangements (custody and access)
- financial support
- division of family property
- the right to live in the family home
- responsibility for family debts
- estate rights on the death of each spouse

Sometimes parties work out the main features of their agreement on their own or with the assistance of a mediator. Lawyers can then provide advice and put their agreement in a more detailed and formal document.

Often couples are unable or unwilling to make an agreement on their own and each party hires a lawyer to bargain or negotiate the terms of an agreement for them. Sometimes, couples want to cut legal costs by having one lawyer act for both of them. This is not possible. A lawyer can only represent one party in a case.

It is important that both parties have independent legal advice, because a separation agreement is a legally binding contract. If a spouse fails to meet the requirements of the agreement, the other spouse may sue in court. If the agreement is a bad bargain for one spouse (Ex: a spouse gets less property than he/she would be entitled under the law) a court is unlikely to interfere and make changes. The court may set aside an agreement if a spouse convinces the court the agreement was made because of fraud or unfair pressure.

A separation agreement can be much more detailed than the usual court order and more tailored or sensitive to the particular family's needs. However, it is not a court order and can be more costly and difficult to enforce. For this reason, in Manitoba, provisions in a separation agreement for the payment of support can be enforced through the Maintenance Enforcement Program in some circumstances. See Chapter 11, for more information on this.

COURT ORDERS ON SEPARATION

When spouses separate and one or both want or need the court's assistance, but don't wish to start divorce proceedings at that time, either the husband or a wife may apply for a court order under *The Family Maintenance Act*. The court can make orders of separation, custody, access, child and spousal support, financial disclosure, sole occupancy of the family home and protection. An order can be granted on a temporary basis *(interim order)* until the issues are finally settled or on a final basis *(final order)*.

Order of Separation

A spouse does not need to prove any fault or misconduct by the other spouse to obtain an order of separation. It does not matter if the spouses have agreed to separate or not, or if one spouse may have been more at fault than the other. If the judge feels that the spouses may be able to reconcile, the judge may postpone the proceedings to allow the spouses to consult a marriage counsellor.

Order Respecting Period of Cohabitation

For common-law partners, the court can make a finding about the period of time they cohabited in a common-law relationship and the dates their cohabitation began and ended.

Order of Custody and Access

The act provides for orders of *custody* (the right to care and control of a child) to one parent alone or to both parents *(joint custody)*. Orders of *access* set out the kind of contact a parent without custody will have. Chapter 5 explains the law in this area.

Order of Financial Support

Either spouse can ask the court to order the other spouse to pay maintenance to support the spouse or any children in his or her care. Chapter 7 and Chapter 8 explain the law in this area.

Order of Financial Disclosure

Both spouses have the right to request and receive financial information from each other, for example, tax returns and statements of earnings, assets and debts. This right exists both before and after separation. If a spouse fails to provide the information when requested, the other spouse can apply to the court for an order of financial disclosure and for an order requiring the spouse to pay a penalty of up to $5000. The court may also order a spouse's employer to provide financial information about the spouse.

Order of Sole Occupancy

The court can order that one spouse alone will have the right to live in the family home. This kind of order prevents the other spouse from living in the home even if she or he owns it.

Order of Postponement of Sale

Where the court gives a sole occupancy order to one spouse and the other spouse owns all or part of the home, the court can also postpone any rights that the other spouse has to divide, rent, sell or otherwise dispose of the home.

Order of Protection

Before September 30, 1999, a spouse could apply to court at any time for orders stating that:

- the other spouse must not molest, annoy or harass him or her, or any child in his or her care (*a non-molestation order*); and
- the other spouse must not enter the home or workplace of the applicant spouse (a *prohibition order*).

As of September 30, 1999, spouses can no longer apply for these types of orders, but any existing non-molestation or prohibition orders usually remain in effect. See Chapter 10, Family Violence, for the new types of orders of protection (protection and prevention orders) the court can make under *The Domestic Violence and Stalking Prevention, Protection and Compensation Act*. Under *The Family Maintenance Act*, the court can also make orders prohibiting or restricting communication and contact between spouses or common-law partners.

If, at any time, the safety of a spouse or common-law partner, or his or her children, is threatened, the police should be contacted at once for assistance. For other protection and help available to an abused spouse, see Chapter 10.

Order of Costs

The court usually orders the spouse who has been unsuccessful in the court to pay part or, in rare cases, all of the legal costs of the successful spouse. For example, a spouse who has refused to pay a reasonable amount of support may be ordered to pay costs, or a spouse who has been unco-operative about financial disclosure may have to pay costs.

Common-Law Partners

One area where common-law partners are treated differently from married spouses is divorce. Only married spouses can seek a divorce. However, except for an order of separation, all the court orders on separation described on pages 28 and 29 are also available to common-law partners. While common-law partners cannot divorce, some Manitoba laws provide for the termination of common-law relationships. In the case of a common-law relationship that is registered with the Vital Statistics Agency, it can be terminated by either or both of the partners registering with the Vital Statistics Agency a dissolution of the relationship. This can only be done after the couple has lived separate and apart for at least one year. If only one of the partners registers a dissolution, the other partner must be given notice of it. For common-law partners who never registered their relationship, it can be terminated under some laws by them living separate and apart, usually for at least three years. Some rights and obligations of common-law partners may continue, even after the relationship has been terminated, just as some rights and obligations of spouses may continue for a period of time after divorce. It is best to seek advice from a lawyer about this.

DIVORCE

Residency Requirement

An application for divorce can be made in a province only if one of the spouses has been a resident of the province for the past year or more.

Joint Petitions

Usually one spouse files the application for divorce, called a *petition*, although the *Divorce Act* allows spouses to file the petition together. Some spouses feel a joint petition is more appropriate when they are in agreement on all issues.

Grounds for Divorce

Spouses cannot obtain a divorce simply by agreeing to it. The court must be given proof that *marriage breakdown* has occurred. Marriage breakdown is the sole ground for divorce, but it can be established in one of three ways: separation of one year or more; adultery; or mental or physical cruelty.

▪ Separation of One Year or More

Either or both spouses may apply for a divorce on the ground of marriage breakdown due to a separation of a year or more. The separation does not have to be a joint decision—it does not matter if only one spouse wants the separation as long as a separation actually occurred.

A petition can be filed in court before the full year of separation has passed, as long as the spouses are actually separated at the time the divorce petition is filed. The court cannot grant the divorce until the spouses have been separated a full year, but filing the petition early means it can be heard quickly after the year has elapsed.

The required year of separation is not broken if the parties live together *(cohabit)* again in an attempt to reconcile, for no more than 90 days in total.

▪ Adultery

A spouse can seek a divorce at any time if the other spouse has committed adultery, that is, the spouse voluntarily had sexual intercourse with another person. Even if spouses are separated from each other, voluntary sexual intercourse is adultery and can be used by the other spouse to ask for a divorce.

The spouse does not need to be separated to apply. The spouse must prove to the court that the adultery took place.

▪ Cruelty

A spouse can also seek a divorce at any time on the basis that the spouse has been treated with cruelty by the other spouse. Cruelty can include acts of physical violence and causing severe mental anguish. The spouse applying for the divorce must prove that the cruelty took place, that it seriously affected him or her and that it made living together unbearable.

The Divorce Hearing

Uncontested divorce applications may be decided on the basis of either written, sworn statements *(affidavits)* or evidence given by the applicant spouse under oath at a short court hearing. Many spouses prefer to have an uncontested divorce decided on the evidence in affidavits, so they do not have to appear in court.

Where the spouses do not agree on the divorce, or on issues relating to the divorce (such as custody or support), a formal court hearing with sworn evidence is necessary. If the judge feels the spouses may be able to

reconcile, he or she may adjourn the divorce hearing to give them the opportunity to do so.

The court must also be satisfied that reasonable arrangements have been made for the support of the parties' children and if the judge feels that reasonable arrangements have not been made, the judge must postpone granting the divorce until that is done.

The Divorce Judgment

If, after considering the evidence, the judge believes that marriage breakdown has been established, the judge grants a preliminary order called a *divorce judgment*. The parties can't remarry until the divorce becomes final *(takes effect)*. Neither spouse has to apply for their divorce to become final. The divorce automatically becomes final on the 31st day after the divorce judgment is granted, unless the court has ordered that it is final sooner, or one spouse appeals it.

After a divorce becomes final, the former spouses should obtain a *certificate of divorce* from the court office. This document proves that the divorce has taken place and will need to be produced if either person wishes to marry again.

Other Orders Available on Divorce

A judge dealing with a divorce application can also consider questions of custody, child and spousal support, as well as matters governed by provincial law, such as claims for property and protection orders. Provisions relating to such matters are contained in a separate order. The court can also grant temporary orders *(interim orders)* of custody and support where such decisions are needed before a trial can take place and the issues resolved on a final basis.

CHAPTER 5

CUSTODY

The legal term *custody* refers to all the rights and duties related to the care of a child. This includes the right to make all important decisions about the child's care and upbringing (*legal custody*), and the right to the actual everyday physical care and control of the child (*physical custody*).

Under *The Family Maintenance Act*, both parents of a child have equal rights to the custody and control of their child, if they have lived together after the child's birth and no court order has set out a different arrangement. It does not matter if they are married or unmarried. A written agreement cannot change this custody right. However, if the parents never lived together after the child's birth, the parent with whom the child lives is deemed to have sole custody and control.

At present, both *The Family Maintenance Act* and the *Divorce Act* use the terms custody and access. The federal government is expected to reintroduce a bill (proposed new legislation) to change the federal *Divorce Act*. This bill is expected to replace custody and access orders with parenting orders that set out what parenting time and responsibilities each parent will have. Information on the status of federal bills is available on the Internet at www.parl.gc.ca/LEGISINFO.

COURT ORDERS OF CUSTODY

Best Interests of the Child

When parents separate and can't agree on parenting arrangements, either parent can ask the court to make the decision for them. The court must make custody decisions based on what arrangements are in the *best interests of the child*. This involves an evaluation of what will promote the child's physical, emotional, intellectual and moral well-being. The court encourages parents to resolve the dispute through mediation. The court has the power to refer parents to a mediator at Family Conciliation, a branch of Manitoba Family Services and Housing, that works closely with the court. If mediation is inappropriate or mediation is unsuccessful, the court will make a decision based on the *best interests of the child*.

The court will take into account a number of factors, such as:

- care arrangements before the separation (Ex: Who looked after the child most of the time? Who took the child to the doctor and dentist? Who arranged extra-curricular activities? Who dealt with the child's school and teachers?)
- the parent-child relationship and bonding
- parenting ability

- any family violence or other conduct that relates to parenting ability
- the parents' mental, physical and emotional health
- the parents' and the child's schedules
- support systems (Ex: assistance and involvement from grandparents and other close relatives)
- sibling issues (Ex: brothers and sisters should generally remain together, but under some circumstances, it may be necessary to consider separating them)
- the child's special needs (Ex: the child has a serious medical condition and one parent is better able to handle the care required)

The court will also consider the child's wishes. There is no magic age for when a child has the right to decide where he or she is going to live. The court gives more weight to the child's wishes as the child matures. An older teenager's wishes will often be decisive.

Children shouldn't be put in the position of having to choose one parent over the other because it may be psychologically damaging. Children should never be placed in the middle of their parents' dispute. As a general rule, parents should never involve their children directly in the court proceeding by getting them to provide or sign affidavits or testify. This is very destructive and almost always unnecessary. If the court needs to know the children's wishes, a parenting expert can be called on to interview the children and report to the court. This report would be part of a complete assessment of parenting arrangements for the family. See the section on assessments later in this chapter.

The judge will also look at each parent's willingness to support the other parent's involvement with the child. For example, if one parent talks badly about the other parent to the children or in the children's presence and prevents the other parent from seeing the children without good reason, the judge may decide that parent should not have custody.

The law encourages the continuation of a healthy relationship between both parents and their children after separation. Unless there is a risk to the children, generally it is best for children to have contact with both parents.

Sole Custody

A court order of custody or *sole custody* to a parent means that parent has both legal and physical custody of the child. He or she makes the important decisions about the child's education, extracurricular activities, health and religion, and the child lives most or all of the time with that parent.

When the court makes a sole custody order, it will usually give the other parent access, the right to have contact with the child. What an order of access or reasonable access means depends on the arrangements the parents make between themselves. For example, it may mean that the child lives with the other parent two or three days a week, or that the child sees the other parent once a week.

Sometimes, especially when the parents have difficulty co-operating with one another, the court may order *specified access*. This kind of order will lay out exactly when and under what conditions the other parent can have contact with the child. Where there is tension and conflict between the parents or safety concerns, the court may order that a third party be involved to facilitate the access (Ex: by helping with the pick-ups and drop-offs). If

there are real concerns about the behaviour of a parent during access, the court can impose conditions. For example, if a parent drinks and drives with their children as passengers, those children are put at risk. If a parent has reason to believe the other parent is endangering the children this way, he or she can ask the court to prohibit that parent from consuming alcohol before or during any period of access, or prohibit that parent from driving with the children. Where the court is concerned about the child's safety in the care of that parent, the court may order that another person supervise the access. Specialized services are available in Winnipeg and certain regional centres to assist with the pick-up and drop-off of children for access or access supervision. For more information, contact:

Winnipeg Children's Access Agency
Phone: 284-4170
Brandon Access Exchange Service
Phone: 729-8115
Thompson Access Exchange Centre
Phone: 778-1206
Interlake Eastman Visitation Service
(Selkirk)
Phone: 1-866-886-6153

Parents who do not have custody (*non-custodial parents*) have rights to information about the child. The federal *Divorce Act* gives a parent with an access order the right to ask for and be given information as to the health, education and welfare of a child, unless a court orders otherwise.

The Family Maintenance Act says the non-custodial parent has the same right as the custodial parent to receive school, medical, psychological, dental and other reports about the child, unless a court orders otherwise. The provincial legislation makes it clear that this is a right to information only. It is not a right to be consulted about or participate in decision-making about the child.

Joint Custody

The court often orders that the parents have joint custody, with one parent having *primary physical care and control*, and the other parent having *physical care and control as the parties may agree* or at specified times. This kind of order means that both parents have legal custody of the child — joint decision-making power- but one parent looks after the child most of the time and makes the everyday decisions about the child's care. Some orders don't use the word *custody* at all but specify the times the child will spend with each parent. With such orders, both parents would continue to have joint custody according to *The Family Maintenance Act*.

Sometimes the court will state in the order that the parties must consult with each other on all major decisions respecting the child, but that one parent has the right to make the final decision if they can't agree. The court is more likely to make a joint custody order where the parents agree on it and appear to be able to co-operate with one another for the benefit of the child.

Shared Custody

The court can order that the parents not only have joint legal custody but also joint physical custody — that is, the child will live with each parent more or less equally. The court is very unlikely to make this kind of order where one party is opposed to it. Shared custody requires parents to be able to effectively communicate and co-operate with one another.

Assessments

Where parents can't agree on parenting arrangements, the court may order that an independent expert evaluator investigate and provide an assessment report to the court. The person who does the assessment is a family relations specialist employed or retained by Family Conciliation, unless the parents agree to a different person or agency. The parents do not pay for the assessment if it is prepared by Family Conciliation. Parents cannot be forced to participate in the assessment, but a judge may look negatively on a parent's refusal to co-operate in an assessment.

The evaluator interviews and observes the parents and the children and may also speak to extended family members (Ex: grandparents) and others, such as the child's teachers. The evaluator writes a report with recommendations and gives it to the court and the parents. If the parents still don't agree on the parenting arrangements and there is a trial, each of them has the right to ask that the evaluator come to the trial and to ask the evaluator questions (*cross-examine*) about the report.

A parent does not have the right to have an assessment prepared by Family Conciliation. The court will order it only if the court thinks it is necessary to resolve the dispute. Parents can hire a private practitioner at their own expense, but a private assessment should have the agreement, co-operation and participation of both parents.

Moving Away

When parents have joint custody (under a court order or not) neither parent has the right to move the child without the other parent's consent, unless a court order provides otherwise. Where the court has ordered specified access, the custodial parent should not move the child without the non-custodial parent's consent. It is very important to consult a lawyer in these situations well before the move is to take place, as a court order may be necessary. See Chapter 11 on enforcement.

Where One Parent Lives Outside Manitoba

As a general rule, when the child lives in Manitoba, a parent who wants an order of custody or access must apply to a Manitoba court. This is the case even if that parent lives outside Manitoba. In an application under the *Divorce Act*, a parent may make a claim for custody or access in a court in a province where one of the parents normally lives, even if the child does not live there. However, the court will usually transfer the proceeding to the province where the child normally lives.

Changes in Custody Orders

Where there is a court order of custody and an important change occurs affecting a child, either parent may ask the court to change *(vary)* the order. One example of this might be where a teenage child wants to spend more time with a parent than the court order allows, or a custodial parent wants to change the access order because the other parent is not caring for the child adequately during visits. If the parents can't agree on changing the order, they may choose to attend mediation before asking the court to decide the issue.

PARENTING AGREEMENTS

Many separating parents prefer to resolve their disputes over parenting arrangements outside of court by reaching parenting agreements. The intent is to keep the stress and disruption of separation at a minimum for the children's sake.

This approach provides parents with the freedom to make parenting arrangements that best suit their family. For example, they may not want to use the traditional legal terms of custody and access that some people feel are not appropriate to describe a parent-child relationship. Traditional legal language is not required and they may want to have an agreement which recognizes joint responsibility and commitment to care for the child.

Parenting agreements usually cover such matters as where the child is to live, how the parents will share the child's time and how decisions about the child will be made.

Most agreements will also contain a provision that the parties can amend the agreement if an important change occurs, and that if they can't agree on the amendment to the agreement, either can apply to the court for an order. Some agreements state that as an alternative, the parties will go to mediation or arbitration to resolve the issue.

MEDIATION

Lawyers can help parents negotiate an agreement. A mediator, whether a lawyer, a social worker, or other professional, can help parents make their own agreement.

Family Conciliation provides mediation on parenting issues at no cost. Before mediation begins, the parents are interviewed to determine whether mediation is appropriate in their case. Mediation is not considered appropriate, for example, where there has been family violence.

The parents must attend a supportive information program, ***For the Sake of the Children.*** Once parents have attended the program and have decided to proceed with mediation, Family Conciliation will assign a mediator. The mediator will meet with the parents separately and together, and sometimes with the children. The mediation is confidential and nothing said in the mediation can later be used in a court custody proceeding.

Family Conciliation also offers a special kind of mediation service, called Comprehensive Co-Mediation, through its Winnipeg office. This allows parents to mediate all issues, including child support, spousal support and division of family property.

If mediation is successful and the parents agree on their arrangements, the mediator puts the agreed parenting arrangements in writing and advises the parents to review it with their lawyers. The lawyers will then put the mediated parenting agreement into a formal agreement, usually as part of a complete separation agreement that settles all issues between the parents, or in a court order, or both.

There are also mediators in private practice. See Chapter 2 for more information about private mediation.

FOR THE SAKE OF THE CHILDREN PARENT INFORMATION PROGRAM

The purpose of the Manitoba government's ***For the Sake of the Children*** parent information program is to help parents:

- understand what they are going through both legally and emotionally
- cope with and adjust to separation, so they in turn, can help their children adjust

Professionals who specialize in family conflict resolution present the program. There are two seminars, each about three hours long.

The programs focus on how both parents and children experience separation, the costs of conflict, the benefits of keeping conflict low, children's needs at different ages, parenting plans, legal and economic issues, alternatives to court and reorganizing after separation. Videos are used to help discussion on communication with children and the other parent, and new partner issues.

Two different programs are offered in the second seminar. One is designed for parents experiencing lower levels of conflict. This program emphasizes a more direct contact approach to parent communication. The other program is designed for parents experiencing higher conflict and focuses on safe, low- to no-contact approaches to parenting. All participants attend the first seminar. Participants then enroll in either the lower conflict or higher conflict program. A CD-ROM of the first seminar and legal information video can be borrowed from Family Conciliation offices, libraries, court offices and Legal Aid offices in rural and northern Manitoba.

For the Sake of the Children is open to all parents and anyone else who wishes to attend. There is no cost to participants. For more information or to register for a session near you, call between 8:30 a.m. to 4:30 p.m.:

- Winnipeg 945-4257
  Toll free: 1-800-282-8069 (Ext. 4257)
- Brandon 726-6336
  Toll free: 1-800-230-1885
- Dauphin 622-2318
- Flin Flon 687-1730
- The Pas 627-8221
- Thompson 677-6497

In Winnipeg, ***For the Sake of the Children*** runs several sessions per week days and evenings, as well as occasional Saturday mornings. Parents should be able to attend the first seminar within a week or so of registering. Schedules vary outside Winnipeg.

More information about the services offered by Family Conciliation is available on their website at: www.gov.mb.ca/fs/childfam/family_conciliation.html.

CHAPTER 6

PARENTAGE

Children born to married parents and those born outside marriage have equal legal status and rights. In determining matters such as a child's right to maintenance or to inherit from a parent or relative, it does not matter if the child's parents were married or not.

The Family Maintenance Act has provisions for determining the parentage of a child when this is in dispute. For example, a mother may wish to have a certain man legally declared to be the father so that her child may have the right to support from him and the right to inherit from him. A man may want to have the court declare him to be the father of a child so that he can claim custody or access.

The act sets out certain circumstances where it is presumed that a man is the father of a child. These are:

- he was married to the child's mother when the child was born
- he was married to the mother and the marriage ended within 300 days before the child was born (the court may allow a longer period)
- he married the mother after the child's birth and acknowledged that he is the father
- he and the mother have acknowledged in writing that he is the father
- he and the mother were living together in a relationship of some permanence at the time of the child's birth
- the child was born within 300 days after he and the mother stopped living together in this type of relationship (the court may allow a longer period)
- he has been found by a court to be the father

If any of these circumstances *(presumptions of paternity)* apply, the court will make an order declaring the man to be the father of the child, unless the man proves to the court that he is not the father. If none of the presumptions of paternity apply, the person seeking the declaration must prove that the man is the father of the child. Blood or DNA tests may be helpful to decide a child's parentage.

Where a presumption of paternity applies, an application for a declaration of parentage can be made where either the father or the child is alive. For example, an application for an order declaring a man to be the father of the child can be made after the man's death. If none of the presumptions of paternity apply, an order will not be made unless both the man and the child are alive.

Once the court has declared a person to be a child's parent, the order is forwarded to Manitoba's Vital Statistics Agency and the registration of birth for the child is amended accordingly.

CHAPTER 7

CHILD SUPPORT

Both parents have an equal duty to provide financial support for their children, whether or not there is a court order. This responsibility exists even where a court order or agreement gives a parent no right to see or even contact the children. A parent who remarries or enters into a new common-law relationship and starts a new family is still responsible for supporting the children of a previous marriage or relationship.

A parent is responsible for his or her own children, by birth or adoption. A parent must also support a partner's children, if that parent acted as a parent to the partner's children before the separation. Anyone who stands in the place of a parent (*in loco parent*) to a child is obliged to support the child.

HOW LONG MUST A PARENT PAY SUPPORT?

In Manitoba, parents must support a child until the child is 18. Support may be required past the age of 18 if the child is still dependent because of illness or disability or if the child is still in school or completing his or her education at university or other post-secondary institution. Child support orders do not automatically end when a child turns 18 or is no longer dependent, unless the support order specifically says that it does. If the support order does not specify when child support ends, an application must be made to court to change *(vary)* the order.

HOW MUCH?

In Manitoba, the court must decide the amount of a child support order under *The Family Maintenance Act* by following the rules and the tables contained in the Manitoba *Child Support Guidelines*. The Manitoba guidelines also apply to orders under the federal *Divorce Act*, unless one of the parents lives outside Manitoba. In that case the *Federal Child Support Guidelines* apply.

MANITOBA CHILD SUPPORT GUIDELINES

Child Support Tables

The guidelines set out how the court must calculate child support. The guidelines contain tables of child support amounts and the rules for using the tables. Manitoba has its own rules about how to use child support tables, but Manitoba uses the tables under the *Divorce Act*. For information on the *Federal Child Support Guidelines* tables, go to www.canada.justice.gc.ca.

There is a separate table for every province and territory, but there is little difference between them. The variations between provinces and territories are a result of different tax rates. The table to use is the one for the province where the paying parent lives. There are different rules when the paying parent lives outside Canada or can't be found. Then the table for the province where the recipient lives is used.

The tables set out the monthly amount to be paid. The amount depends on the total annual income (before taxes) of the payor and the number of children to be supported under the order. For example, under the current Manitoba tables, if the payor lives in Manitoba, earns $30,000 a year, and the order is for three children, the payor will pay $556 a month.

Special or Extraordinary Expenses

In some circumstances, the court may add an amount to the basic table amount of support for certain *special* or *extraordinary expenses*. The expenses that may be claimed are:

- child care expenses that the primary caregiver has because of work, school, training, illness or disability
- health-related expenses over $100 above any insurance coverage, including, medicine, dental care, glasses
- extraordinary expenses for primary or secondary school or other educational programs the child needs
- post-secondary education expenses
- extraordinary expenses for extracurricular activities

Questions the court considers:

- Is the expense necessary for the child?
- Is the expense reasonable, considering the parents' means and how the family spent its money before the separation?

In deciding what amount to order, the court considers any financial assistance the primary caregiver gets for the expense (Ex: a tax deduction for child care expenses) and both parents' incomes. As a general rule, the parents share the special expenses according to their income. The amount the paying parent pays is usually proportionate to each parent's income, above a certain minimum level. For example, if the paying parent earns twice as much as the receiving parent, and the expense is $75 a month, the paying parent will pay an extra $50 support. If the primary caregiver has little or no income, the paying parent may pay more, up to the total of $75. If the exact amount of a special expense is not known, the court can estimate the amount.

Split Custody

When the parents split custody – each parent has primary care of one or more of their children – child support is calculated by figuring out how much each parent would pay to the other for the children in the other's care. The difference between the two amounts is the amount of support the parent who would have to pay more actually pays to the other parent. For example:

> Jane and John have three children. Jane is the primary caregiver for two children and John is the primary caregiver for the third. John earns $30,000, so he would pay a table amount of $420 to Jane for the two children. He also is to pay $50 a month for special expenses, for a total of $470. Jane earns $20,000, so she would pay a table amount of $153 for one child. The difference between the two amounts is $317. The child support order would require John to pay Jane $317 per month.

Shared Custody

If the parents have shared custody, child support is calculated differently. To have shared custody means each parent must have the child at least 40 per cent of the time over the year. In these situations, while the court

must consider the table amounts, it does not have to follow them. The court looks at the increased costs of a shared custody arrangement and the complete financial situation, including both parents' incomes, and the needs of the child. This may result in the paying parent paying more or less than the table amount, or the table amount plus special expenses. Basically, the guidelines allow the judge to decide what is fair and reasonable in the circumstances.

Children over 18

The guidelines also allow a more flexible approach in deciding support for children over 18 years old when the court feels using the guidelines tables is inappropriate. For example, the court may want to take into consideration income the child has from part-time jobs and scholarships, and any additional living expenses the child may have as a result of attending university away from home.

Payor's Income over $150,000

Where the payor's income is over $150,000 per year, the court must order the table amount for $150,000, but the court is free to decide what additional amount of support, if any, is reasonable in relation to the amount of the payor's income over $150,000. In doing so, the court looks at the total financial picture, including both parents' incomes.

Step-children

Where the payor is a step-parent, or another person standing in the place of a parent, the amount of support depends on what the court thinks is appropriate in light of the guidelines and the parents' duty to support the child.

Undue Hardship

The court can make an order for more or less than the guidelines amount if either parent convinces the court that the guidelines amount would cause *undue hardship* to the parent or a child. For example, a paying parent who has to support a child from another relationship, or a paying parent who has unusually high access expenses, or a recipient parent who has unusually high basic living expenses, might claim undue hardship.

The parent claiming undue hardship must also show the court that the standard of living of his or her household would be lower than the standard of living of the other parent's household if the guidelines amount were paid. This means the court can look at the financial circumstances of all members of the parents' households, including new partners.

Special Provisions

Where there are special provisions in an agreement, or an order, that benefit the child, the court does not have to follow the guidelines, if doing so would be unfair considering the special provisions. For example, the court might decide it shouldn't order the guidelines amount where the paying parent agreed to transfer the family home to the primary caregiver, and the primary caregiver agreed to accept less monthly child support because of that.

Consent Orders

Parents may agree to child support different from the guidelines, but the court will not order the different amount unless it is reasonable. The court will look at the child support guidelines and the financial information the guidelines require the parents to file with the court. (See the section on Financial Disclosure that follows.) If the court does not think the agreed upon amount is reasonable, the court

may order a different amount or refuse to grant a divorce until the parents agree to an amount that is reasonable or agree to have the court decide the proper amount.

Determining Income

In making a child support order, the court always needs to know the paying parent's income and, in certain cases, the recipient parent's income as well. The table amounts vary according to the payor's total annual income before taxes. This includes the payor's income from all the same sources of income that a person must report in a tax return (Ex: employment, pensions, business, professional, commission, farming, fishing, workers' compensation and social assistance benefits).

For people whose only income is from employment, it is gross pay that is used, not net or take-home pay after deductions. The guidelines do, however, allow the addition and subtraction of some items, such as union and professional dues.

The court will estimate the amount the person is likely to receive in the current year, based on his or her present earnings and other income, and what the person has earned in the past three years.

Amounts that a person shows on a tax return do not always show a person's ability to pay support. For this reason the guidelines allow the court to add an amount to a person's income *(impute income)* in some circumstances. For example, a parent who is not required by law to pay income tax has more disposable income to pay child support than a person who must pay tax, so the court can add an amount to take this into account. Similarly, where a person quits a job to avoid paying support, the court can say the person's income is the same as it would have been if the person hadn't quit.

Financial Disclosure

As discussed, the amount of child support relates to the paying parent's income and in some cases to the recipient parent's income. The guidelines require the paying parent in all cases, and the recipient parent in certain cases, to provide certain financial information to the other parent on request. The basic rule is that a parent must provide income information where it is necessary to decide the amount of the order. The request must be in writing and can be made only once a year, unless there is a child support application before the court.

The information to be provided is:

- a sworn financial statement in the form required by the court
- a copy of every personal income tax return filed by the parent in each of the three most recent taxation years
- a copy of every notice of assessment or reassessment issued to the parent for each of the three most recent taxation years
- where the parent is an employee, the most recent statement of earnings indicating the total earnings paid in the year to date (including overtime) or, where such a statement is not provided by the employer, a letter from the parent's employer setting out that information, including the parent's rate of annual salary or pay
- where the parent is self-employed, income for the three most recent taxation years in the form of:
  - the financial statements of the parent's business or professional practice, other than a partnership
  - a statement showing a breakdown of all salaries, wages, management fees or other

payments or benefits paid to, or on behalf of, persons or corporations with whom the parent does not deal at arm's length

- where the parent is a partner in a partnership, confirmation of the parent's income and draw from, and capital in, the partnership for its three most recent taxation years
- where the parent controls a corporation, for the three most recent taxation years in the form of:
  - the financial statements of the corporation and its subsidiaries
  - a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation, and every related corporation does not deal at arm's length
- where the parent is a beneficiary under a trust, a copy of the trust settlement agreement and copies of the trust's three most recent financial statements

In addition, if there is a special expenses order, a parent has the right to current information on the special expenses. Where an order was based on a finding of undue hardship, a parent has the right to current information on the circumstances that led to the finding.

When a child support application is made to the court, either or both parents (depending on whose income information is necessary), must file with the court a sworn financial statement and copies of Canada Revenue Agency (CRA) income and deduction computer printouts showing the parent's income for each of the three most recent taxation years. The court can require the parents to file more financial information.

Parents who do not provide the required information may face serious penalties. They may have to pay the other parent a penalty of up to $5,000 and the other parent's legal costs. Contempt of court proceedings may result.

FEDERAL CHILD SUPPORT GUIDELINES

The *Federal Child Support Guidelines* are the same as the Manitoba guidelines in most respects. They apply in *Divorce Act* cases where one of the parents lives outside Manitoba. The support tables are exactly the same as the Manitoba *Child Support Guidelines* tables. However, there are some differences between the federal and Manitoba guidelines. For example, the federal guidelines require parents in all cases to file with the court all the financial documents listed under the Financial Disclosure section. However, the Manitoba guidelines only require a parent to file with the court a financial statement and the CRA printouts. Another example is that the federal guidelines allow both parents to claim special or extraordinary expenses. To find out more about the *Federal Child Support Guidelines*, contact:

Federal Department of Justice
Toll free: 1-888-373-2222
Website: www.canada.justice.gc.ca

CHANGING A CHILD SUPPORT ORDER

A parent can apply to court to change *(vary)* a child support order. The court may change the order if:

- the order was made under *The Family Maintenance Act* before June 1, 1998, the date the Manitoba *Child Support Guidelines* came into force

- the order was made under the *Divorce Act* before May 1, 1997, the date the *Federal Child Support Guidelines* came into force
- the order was made under the Manitoba *Child Support Guidelines* or the *Federal Child Support Guidelines* and was based on a table amount and a change has occurred (Ex: a change in the payor's income) which would result in a different table amount
- the order was made under either the Manitoba *Child Support Guidelines* or the *Federal Child Support Guidelines* and it was not based on a table amount and an important change has occurred

The court will make the new order under the child support guidelines.

In March 2003, a new information booklet was developed to help parents apply to a court in Manitoba to change a child support order. This booklet, which is free of charge, is called *A Guide to Changing Child Support Orders in Manitoba* and it is available on the Internet at www.gov.mb.ca/justice/family/changembsupportorder. The booklet can also be obtained through Manitoba court offices, the Maintenance Enforcement Program, offices of Legal Aid Manitoba, the Community Legal Education Association or

Family Law Branch
705 - 405 Broadway
Winnipeg MB R3C 3L6
Phone: 945-0268
Fax: 948-2004
Toll free: 1-800-282-8069 (Ext. 0268)

CHILD SUPPORT RECALCULATIONS

Both *The Family Maintenance Act* and the *Divorce Act* allow a program to be set up to recalculate child support orders at regular intervals based on updated income information. A recalculation is different from a variation in that a recalculated order will only take effect 31 days after both parents are advised of its terms. It cannot deal with support prior to that date, nor can it deal with any arrears of support. A variation can take into account changes other than income (such as a child no longer being dependent or moving to live with the other parent).

Manitoba Justice anticipates opening a Child Support Recalculation Service in Winnipeg to handle Manitoba cases in the spring of 2005. The service will be a two-year pilot project operating until March 31, 2007. To begin with, the service will only recalculate orders under Manitoba's *Family Maintenance Act*. It is hoped that arrangements will be able to be made with the federal government for the service to also recalculate *Divorce Act* child support orders.

To find out how to get more information about this service contact:

Child Support Recalculation Service
2nd floor 373 Broadway
Winnipeg MB R3C 4S4
Phone: 945-2293
Fax: 948-2423
Toll free: 1-800-282-8069 (Ext. 2293)

For recalculation to be considered, the child support order must be a final one, contain a table amount of child support and be based on the actual income of the payor. Both parents must live in Manitoba and one of them must obtain a court order authorizing the service to recalculate child support at regular intervals.

To begin the recalculation process, the Child Support Recalculation Service will send a notice to both parents with a request for necessary updated financial information. The service will use this current income information to recalculate the table amount of support and, in some cases where the court has directed it, the amount for special or extraordinary expenses. The Child Support Recalculation Service will either issue a recalculated order or decline to do so if it decides, for technical reasons, that it would not be appropriate to recalculate the order. If either parent disagrees with the recalculated child support amount, he or she can, within 30 days of receiving the order, apply for a variation and a judge will decide what the child support amount should be.

WHERE ONE PARENT LIVES OUTSIDE MANITOBA

⚖ *The Family Maintenance Act*

A parent living in Manitoba can apply for support in the Manitoba courts under *The Family Maintenance Act* even if the other parent lives outside Manitoba. If the other parent is served notice and agrees to have the Manitoba court deal with the matter, the Manitoba court can hold a hearing and may make a support order that is valid and enforceable outside Manitoba. If the other parent does not agree with the Manitoba court hearing the matter, the order may not be enforceable outside Manitoba.

⚖ *The Inter-jurisdictional Support Orders Act*

On January 31, 2003, *The Inter-jurisdictional Support Orders Act* came into effect, replacing *The Reciprocal Enforcement of Maintenance Orders Act*. This changed the procedures for recognizing, establishing and varying child support obligations when parties live in different provinces or countries. A reciprocating jurisdiction is a province, state or country that has an agreement with Manitoba to help Manitobans obtain and enforce support orders against a resident in that province, state or country. Residents of the other province, state or country are also able to obtain and enforce support orders against Manitoba residents. All Canadian provinces/territories and all American states are reciprocating jurisdictions, along with many other foreign countries. The list of reciprocating jurisdictions can be found at the end of the *Inter-jurisdictional Support Orders Regulation* at web2.gov.mb.ca/laws/regs/pdf/i060-010.03.pdf.

Under *The Inter-jurisdictional Support Orders Act*, Manitoba parents who want to apply for or change (*vary*) support obligations must fill out a support application form that will be sent to the jurisdiction where the other parent lives. The other parent will be notified of the application and the court there will make the appropriate support order. When the other parent lives outside Canada, there may be additional forms or procedures. Contact the Inter-jurisdictional Support Orders Crown Counsel, Family Law Branch in Winnipeg at 945-0268, toll free 1-800-282-8069 (Ext. 0268) for further information.

Support orders made in other Canadian provinces and territories, and in foreign reciprocating countries, can be registered in the Manitoba court and enforced by the Maintenance Enforcement Program. Manitoba parents who feel that a support order made in another Canadian province or territory should not have been made will need to apply to that other court if they wish to challenge it. Manitoba parents who feel that a support order made outside Canada should not have been made can ask the Manitoba court to treat the order as a support application and request a court hearing in Manitoba to set the appropriate amount of support.

The *Divorce Act*

Spouses can apply for child support under the *Divorce Act* in a Manitoba court as long as one of the spouses lives in Manitoba. The other spouse must be served with the petition. Even if they don't agree with the hearing being held in Manitoba, an order from a Manitoba court is valid. A support order made under the *Divorce Act* is valid and enforceable across Canada, and will usually be enforceable in reciprocating jurisdictions under *The Inter-jurisdictional Support Orders Act*.

Similarly, a Manitoba court can make a valid and enforceable order varying a child support order (*variation order*) although one of the spouses does not live in Manitoba, as long as the other spouse is served with the application. In addition, the *Divorce Act* does have a variation procedure so part of the hearing may be held in one province and the rest in another.

CHILD SUPPORT AGREEMENTS

Separated parents can make a private agreement, out of court, about child support. They may do this as part of a formal, written separation agreement. However, if they want a court order of support or a divorce, the amount of support must be reasonable. See the earlier sections on Manitoba *Child Support Guidelines* and consent orders. The courts do not see agreements on child support to be binding like other contracts. For example, the court will not consider that a primary caregiver is bound by an agreement for child support that is significantly less than the children would get under the guidelines and there are no other benefits to the children in the agreement that would make it fair.

Agreements usually include information on the parents' incomes at the time the agreement is made. They specify how long the support is to be paid (Ex: until the child is 18 or completes his or her first university degree). Most agreements also state that the parents can amend the agreement if an important change occurs and that, if they cannot agree on the change, either can apply to the court for an order.

Agreements often contain much more detail about support arrangements than the usual court order. However, although the Maintenance Enforcement Program can enforce certain support agreements, as well as support orders, the program cannot do so if the provisions of the agreement are unclear or otherwise unsuitable for enforcement (see Chapter 11 on enforcement).

TAXATION OF CHILD SUPPORT

Child support, unlike spousal support, is not taxable income for the recipient and it is not deductible for the paying spouse, unless the parents' order or agreement was made before May 1, 1997 and has not been changed after April 30, 1997. Before May 1, 1997, support paid under child support orders and agreements was included in the recipient's income, and was tax-deductible to the payor, provided certain conditions were met. Child support paid under child support orders and agreements made before May 1, 1997 continue to be included in income and deductible unless:

- the order or agreement provided for the new tax rules to apply
- the parents choose to file a joint tax return with the CRA

To file a joint return, the parents both fill out and sign a CRA Form T1157, Election for Child Support Payments, and send it to the CRA. For more information on this form, contact the CRA at 1-800-959-8281 or on the Internet at www.cra-arc.gc.ca.

To find out more about the tax rules, contact:

Income Tax Rulings Directorate
Policy and Legislation Branch
Canada Revenue Agency (CRA)
16th Tower A Place de Ville
320 Queen Street
Ottawa ON K1A 0L5

General Inquiries Line: 1-613-957-8953
Fax: 1-613-957-2088

CHAPTER 8

SUPPORT FOR SPOUSES AND COMMON-LAW PARTNERS

The court considers a number of factors when deciding whether one spouse or common-law partner should pay support to the other. These include: the needs and financial circumstances of both spouses, the length of the marriage or relationship, the roles each played during their marriage or relationship, the effect of these roles on their current financial positions and, as far as is practical, promoting the financial self-sufficiency of both parties. The court does not consider marital misconduct, such as adultery, when making a support order.

COMMON-LAW PARTNERS

Unmarried partners of both same-sex and opposite-sex common-law couples may seek an order for their own support under *The Family Maintenance Act* if:

- they have registered their common-law relationship with the Vital Statistics Agency
- they have lived together for at least a year and have had a child together
- they have lived together continuously for at least three years

If the common-law partners have already agreed in writing to an amount of support or not to claim support from each other, they cannot apply to the court for support.

If a common-law partner is entitled to claim support, the court will make its decision by considering the same factors it would look at if the partners were married.

EFFECT OF AN AGREEMENT

Where spouses or common-law partners have made an agreement respecting spousal/partner support, the court is unlikely to make a different order. *The Family Maintenance Act* doesn't allow the court to make a spousal/partner support order different from a provision in a separation agreement, unless:

- the payor has not made the payments
- the maintenance payments agreed to were not adequate considering the parties' circumstances when the agreement was made
- the dependent spouse/partner is now receiving, or needs, government assistance

The federal *Divorce Act* does not contain similar provisions preventing the court from making a spousal support order different from an agreement, but it does direct the court to consider an agreement.

WHERE ONE SPOUSE LIVES OUTSIDE MANITOBA

The Family Maintenance Act

A married spouse or common-law partner, living in Manitoba can apply for support in a Manitoba court under *The Family Maintenance Act* where the other party lives outside Manitoba. If the other party is served notice and agrees to have the Manitoba court deal with the matter, the Manitoba court can hold a hearing and may make a support order that is valid and enforceable outside of Manitoba. If the other party does not agree with the Manitoba court hearing the matter, the order may not be enforceable outside Manitoba.

The Inter-jurisdictional Support Orders Act

The Inter-jurisdictional Support Orders Act of Manitoba provides a procedure for a person living in Manitoba to apply for a spousal or common-law partner support order when the other spouse/partner lives in a reciprocating jurisdiction outside Manitoba and has not agreed to the Manitoba court dealing with the matter under *The Family Maintenance Act*. Similarly, the act allows a person living in a reciprocating jurisdiction to apply there for a support order against a spouse/partner living in Manitoba.

A reciprocating jurisdiction is a province, state or country that has an agreement with Manitoba to help Manitobans obtain and enforce support orders against a resident in that province, state or country. Residents of the other province, state or country are also able to obtain and enforce support orders against Manitoba residents. All Canadian provinces/territories and all American states are reciprocating jurisdictions, along with many other foreign counties. Some reciprocating jurisdictions outside Canada may not enforce spousal support orders unless there is also a child support order for the same family. The list of reciprocating jurisdictions can be found at the end of the *Inter-jurisdictional Support Orders Regulation* at web2.gov.mb.ca/laws/regs/pdf/i060-010.03.pdf.

Under *The Inter-jurisdictional Support Orders Act*, Manitoba spouses or common-law partners who want to apply for or change (*vary*) support obligations must fill out a support application form that will be sent to the jurisdiction where the other party lives. The other party will be notified of the application and the court there will make the appropriate support order. When the other party lives outside Canada, there may be additional forms or procedures. Contact the Inter-jurisdictional Support Orders Crown Counsel, Family Law Branch at 945-0268 in Winnipeg; toll free 1-800-282-8069 (Ext. 0268) for further information.

Support orders made in other Canadian provinces and territories, and in foreign reciprocating countries, can be registered in a Manitoba court and enforced by the Maintenance Enforcement Program. Under the new law, Manitoba spouses or common-law partners who feel that a support order made in another Canadian province or territory should not have been made will need to apply to that other court if they wish to challenge it. Manitoba spouses or common-law partners who feel that a support order made outside Canada should not have been made will be able to ask a Manitoba court to treat the order as a support application and request a court hearing in Manitoba to set the appropriate amount of support.

The *Divorce Act*

Spouses can apply for spousal support under the *Divorce Act* in a Manitoba court as long as one of the spouses lives in Manitoba. The other spouse must be served with the petition but does not have to agree with the Manitoba court hearing the matter for the Manitoba court to be able to make a valid order. A support order made under the *Divorce Act* is valid and enforceable across Canada, and will usually be enforceable in reciprocating jurisdictions under *The Inter-jurisdictional Support Orders Act*.

Similarly, a Manitoba court can make valid and enforceable orders varying a spousal support order (*variation order*) although one of the spouses does not live in Manitoba. In addition, the *Divorce Act* does have a variation procedure so part of the hearing may be held in one province and the rest in another.

In January of 2005, two law professors released a draft report about a proposal for spousal support guidelines under the *Divorce Act*. These guidelines will be different from the child support guidelines. They will not be passed into legislation, but will be advisory only. Lawyers may refer to these advisory guidelines when advising their clients about spousal support issues and some judges might consider them when deciding spousal support cases. For more information, contact the Justice Canada general inquiries line toll free:

1-888-373-2222

The draft report is available on the Justice Canada website at:

www.justice.gc.ca/en/dept/pub/spousal/project in English; and at

www.justice.gc.ca/fr/dept/pub/spousal/project in French.

TAXATION OF SPOUSAL SUPPORT

Spousal or partner support paid under a written agreement or court order is generally tax deductible to the payor and included in the income of the recipient. However, all child support due in a year must be paid before any deduction is allowed for spousal or partner support. When deciding on the amount of a spousal or partner support order, the court takes into account the tax benefit to the payor and the fact that the recipient will have to pay income tax on the support received.

CHANGING A SPOUSAL SUPPORT ORDER

A party can apply to the court to change or end a spousal/partner support order if an important change has occurred. Whether the court will change the order depends on a number of factors.

CHAPTER 9

PROPERTY

Before June 30, 2004, Manitoba's family laws dealing with property did not apply to people who were living together but not legally married; these laws only applied to married spouses. On June 30, 2004, a new law came into effect that changed this. *The Common-Law Partners' Property and Related Amendments Act* changed the name of *The Marital Property Act* to *The Family Property Act* and it extended this and many other property laws, such as *The Homesteads Act*, to common-law partners who have either registered their relationship with the Vital Statistics Agency or who have lived together for a specified period of time.

For unmarried partners who permanently separated before June 30, 2004 or for partners who have neither registered their relationship with the Vital Statistics Agency nor lived together for at least three years, the remedies and protection respecting property under that legislation does not apply to them. These partners have no right to any property solely owned by the other partner unless the partner can prove to the court that he or she contributed to acquiring, improving or maintaining the property and should be compensated for that contribution. Unmarried partners, like legal spouses, have equal rights to property that they jointly own.

In Manitoba, *The Family Property Act* sets out the rules for dividing the value of family property between spouses or common-law partners. In general, family property is any property that either or both spouses have acquired while married and living together, or that either or both common-law partners have acquired while they have cohabited. If a couple cohabits for a time immediately before their marriage, the property they acquire during cohabitation is also family property. The basic rule is that both spouses or common-law partners have a right to an equal share in the value of family property when they separate, no matter which one owns the property or where it is located.

The law recognizes that, whether a spouse or common-law partner is responsible for running the household or for earning the family income, the contribution to the relationship is of equal importance and should be given equal weight in dividing family property between the parties.

The Family Property Act applies to all married persons (spouses) living in Manitoba, no matter where they were married or how long they have been married. It does not apply to spouses who were living separate and apart before May 6, 1977 and have not lived together for more than 90 days since then. If one or both spouses no longer live in Manitoba, the act will apply only if Manitoba was the last place they lived together.

The Family Property Act also applies to all common-law partners who have either registered their relationship with the Vital Statistics Agency, or lived together in a conjugal relationship for at least three years. Even though this law, as it applies to common-law partners, has only been in effect since June 30, 2004, the changes made by the act apply to people who were already living together when it came into force. If a couple was living together for three or more years as of June 30, 2004, *The Family Property Act* applies to them immediately. If a couple has been living together for less than three years as of June 30,

2004, *The Family Property Act* will apply to them as soon as they have completed the three years. It does not apply to couples who permanently separated before June 30, 2004.

PROPERTY COVERED BY *THE FAMILY PROPERTY ACT*

Under the act, the value of all assets owned by either or both spouses or common-law partners, including real estate, money, investments, vehicles and jewelry, must be shared by them. There are some exceptions:

- Property acquired before the marriage or before the common-law couple began living together will not be included unless it was acquired in contemplation of the relationship. However, any increase or decrease in the value of such property during the relationship must be shared. For married couples who lived together immediately before they married, any property acquired during the time they lived together must also be shared.

- Property dealt with in a written agreement between the spouses or common-law partners will not be shared unless a court has set the agreement aside. Those who do not want *The Family Property Act* to apply to their property must clearly say so in writing. This agreement may be made before or during the relationship, or upon its breakdown, and must be very carefully drawn up. (See, Chapter 4, Separation and Divorce.) Each spouse or partner should see his or her own lawyer before signing such an agreement.

- Compensation received by one spouse or common-law partner for a personal injury or disability will not be shared unless it was to compensate for a loss suffered by both spouses or partners.

- A gift or inheritance received by one spouse or common-law partner from a third person will not be shared unless the giver intended to benefit both spouses or partners. However, if the gift or inheritance is of extraordinary value, this value may be taken into account in determining how commercial assets will be shared.

- Property equally owned by both spouses or common-law partners (*jointly owned property*) is not shared under *The Family Property Act*, as each spouse or partner already owns one-half of this property in law. Often the family home is jointly owned, so both spouses or common-law partners must agree in writing to any sale, mortgage or other transaction involving it. If spouses or common-law partners cannot agree to the sale of a jointly owned home, an application to have the property sold and the proceeds divided can be made to the court under *The Law of Property Act*.

- Property acquired by one spouse or common-law partner after the couple separated will not be shared between them.

ACCOUNTING AND EQUALIZATION OF FAMILY PROPERTY

Each spouse or common-law partner is entitled to an *accounting* and *equalization* of family property and may apply to court to enforce this right, if necessary.

Where a court has granted a divorce and the issue of family property has not been dealt with, either ex-spouse may apply to the court for an accounting and equalization of assets. This application must be made within 60 days after the divorce takes effect. For common-law partners who have registered their relationship with

the Vital Statistics Agency, either partner may apply to the court for an accounting and equalization of assets, but the application must be made within 60 days after registering the end of the relationship with the Vital Statistics Agency. For common-law partners who have not registered their relationship, the application must be made within three years from the date the common-law partners separated.

An *accounting* involves the preparation of a complete list of assets and debts by each spouse or common-law partner. The list must show the value of each asset and the amount of each debt on the date of separation. If a spouse or partner will not provide such a list voluntarily, the court may order it.

The court will determine the total value of the assets each spouse or common-law partner must account for. It will then determine how much the spouse or common-law partner with more should pay to the other (*an equalization payment*) so that each may have an equal share of the assets. The court does not divide the assets themselves. However, it can order that ownership of an asset be transferred from one spouse or partner to the other to satisfy an equalization payment.

In some cases, the court may decide that the assets should be shared unequally. This depends partly on whether the asset is a *family asset* or a *commercial asset*. The court may divide family assets unequally only if it is satisfied an equal division would be grossly unfair because of extraordinary circumstances. Judges have slightly more discretion to divide commercial assets unequally, but must be satisfied that it would be clearly unfair to share them equally.

Under *The Family Property Act*, property that is used for family purposes, such as shelter, transportation or recreation, is a family asset.

Some examples are:

- the family home
- household furniture
- the family car
- a summer cottage
- money in savings, chequing or current accounts (where this money is used for family purposes)
- rights under life or accident and sickness policies or annuity policies
- registered retirement savings plans (RRSPs)

Family property that is not a family asset is a commercial asset. Some examples are:

- an interest in a business such as a drugstore, construction company, medical or law practice
- a life insurance policy or accident and sickness insurance policy taken out solely to provide compensation for loss to a business undertaking due to death or illness of the insured person

The special nature of a farm may make it both a family and commercial asset.

A farmhouse, and that part of the farmland necessary for the enjoyment of the farmhouse, are considered the family home and therefore a family asset. The rest of the farm property may be a commercial asset.

When deciding whether the assets should be shared unequally, a judge cannot consider the conduct or actions of the spouses or common-law partners unless that conduct amounts to *dissipation*. Dissipation is conduct that seriously threatens the financial security of the family. For example, if one spouse or common-law partner has given an excessive gift to another person, the

court will take the value of this gift into account to reduce that person's share in the family property. However, this can be done only if the other spouse or common-law partner has applied for a division of family property within two years of discovering that this gift was made.

An unequal division of family or commercial assets is very rare.

ORDERS FOR THE PRESERVATION OF PROPERTY

A spouse or common-law partner who has applied to the court for a division of family property may also ask for an order to preserve property. This order prevents the other spouse from destroying, irresponsibly selling or giving away, or removing property from Manitoba before the court has dealt with the family property.

THE FAMILY HOME

One of the most important family assets is the family home. This is any property used as a family residence. It may be a house, apartment, trailer or condominium.

The Homesteads Act of Manitoba gives special protection to the family home. Where the home is owned by one spouse or common-law partner only, the other spouse or partner must consent in writing before it can be sold or mortgaged. If the owner spouse or common-law partner should die, the non-owning spouse is entitled to continue living in the family home for the rest of his or her life, even if the owner's will leaves the home to someone else. To qualify as common-law partners under *The Homesteads Act*, a couple must have either registered their relationship with the Vital Statistics Agency or they must have cohabited in a conjugal relationship for at least three years. If the spouses or common-law partners have been living separate and apart for at least six months, or a court has declared the non-owning spouse or partner to be mentally disordered, the court may allow the transaction to take place without the consent of that spouse or partner. In such a case, the court may also attach conditions to the transaction to protect the non-owning spouse or common-law partner.

Under *The Homesteads Act*, only one spouse or common-law partner at a time can have these special rights in the family home. If the homeowner brings a second or subsequent spouse or common-law partner to live in the home, that spouse or partner does not acquire homestead rights until the rights of the first spouse or common-law partner have been properly dealt with.

THE FAMILY FARM

The special protection consent given the family home under *The Homesteads Act* also applies to the family farm. This legislation applies to not only the farm dwelling, but also up to 320 acres of land.

SHARING OF PENSION BENEFITS BETWEEN SPOUSES OR COMMON-LAW PARTNERS

Both the Canada Pension Plan and *The Pension Benefits Act* of Manitoba provide for sharing of pension benefits between either same-sex or opposite-sex common-law partners in certain circumstances. There is no legislation similar to *The Family Property Act* that would require a common-law partner with an occupational pension in a federally regulated industry, such as banks and airlines, to share his or her pension. However, these pension assets can be divided

between former common-law partners by a court order or a written agreement.

Canada Pension Plan

Most people over age 18 who are employed pay into the federal Canada Pension Plan (CPP). CPP provides three kinds of benefits:

- disability benefits (including benefits for dependant children of disabled contributors)
- survivor benefits (including a death benefit, survivor's pension and a children's benefit)
- retirement pension

The amount of any retirement pension will depend on the length of time the person has worked and the amount he or she has contributed to the plan.

Pension *credits* earned under the plan by either spouse during their marriage or by either common-law partner during the time they lived together, may be divided equally between them upon divorce or separation. In this way, a spouse or common-law partner who has worked in the home throughout the relationship, and therefore could not contribute to the plan, will receive some pension benefits upon retirement of the other spouse or partner. To qualify as common-law partners, a couple must have lived together in a conjugal relationship for at least one year and they must have separated on or after January 1, 1987. A separated partner cannot apply for a division until he or she has have been separated at least 12 consecutive months and he or she must apply within four years from the date of separation.

Spouses who separated or divorced on or after January 1, 1987, and lived together for at least 12 consecutive months during the marriage can obtain a share of the other spouse's credits.

A separated spouse cannot apply for a division until they have been separated for at least 12 consecutive months. If one of the spouses dies, the application must be made within three years of the death. Divorced spouses can ask for a division at any time after the divorce.

The provisions of a spousal or common-law partner agreement signed before June 4, 1986, may prevent a division of Canada Pension Plan credits. If a couple's family property is governed by Manitoba law and they signed an agreement on or after June 4, 1986 to opt out of credit splitting, they are not bound by that agreement. They still have the right to a division of the credits.

For further information on the division of Canada Pension Plan credits, contact Social Development Canada:

- in person
  Winnipeg: 391 York Avenue
  1122 Henderson Highway
  1031 Autumnwood Drive
  3338 Portage Avenue
  Brandon: 1039 Princess Avenue
- by telephone
  1-800-277-9914 toll free (English)
  1-800-277-9915 toll free (French)
  1-800-255-4786 toll free (TTY)
- by mail
  Social Development Canada
  Income Security Programs
  P.O. Box 818 Stn. Main
  Winnipeg MB R3C 2N4
- by Internet
  www.sdc.gc.ca/

The Pension Benefits Act

The Pension Benefits Act applies to pension plans sponsored by an employer for employees in Manitoba. It does not apply to the Canada Pension Plan, to federally regulated pension plans (Ex: plans for employees of banks and airlines), to federal government employees or to personal retirement savings plans (such as RRSPs).

If spouses were separated or divorced on or after January 1, 1984, pension benefit credits earned during the marriage by either spouse may be divided equally between the spouses, unless they agree not to divide the pension.

If an unmarried partner has a pension governed by *The Pension Benefits Act*, his or her common-law partner may be entitled to share the pension credits in some circumstances. To qualify as common-law partners under this law, a couple must have registered their relationship with the Vital Statistics Agency, or they must have cohabited in a conjugal relationship for at least three years if either of them is married, or they must have cohabited in a conjugal relationship for at least one year if neither of them is married. Before June 30, 2004, the pension owning partner had to opt into the sharing provisions by filing with the pension plan administrator a declaration in a prescribed form. This requirement to opt in was repealed as of June 30, 2004. Common-law partners may also make agreements not to divide their pensions.

However, an agreement not to divide a pension is valid only if it is written in a prescribed form. In addition, before signing, each spouse or common-law partner must obtain independent legal advice and receive a statement from the pension plan administrator specifying the pension benefits to which they would have been entitled under the act.

The portion of pension benefit credits to which a spouse or common-law partner becomes entitled under this act is transferred directly to that spouse or partner, but not in funds. Instead, he or she must transfer the credits directly to his or her own pension or retirement benefit plan, or to a locked-in RRSP. If the credits are transferred to a locked-in RRSP, the spouse or common-law partner may purchase a life annuity at any age.

In December, 2004, a bill (*proposed new law*) was introduced in the Manitoba legislature to amend *The Pension Benefits Act*. If passed, Bill 10, *The Pension Benefits Amendment Act* would make a number of important changes to the law relating to pensions in Manitoba including:

- allow a surviving spouse or common-law partner to receive pre-retirement death benefits only if the spouse or common-law partner was cohabiting with the pension holder immediately before his or her death
- allow up to half the pension benefit credits of a pension holder to be withdrawn and placed in certain, not locked-in retirement savings funds, but only with the consent of the holder's spouse or common-law partner
- allow for spouses or common-law partners to waive their rights to certain kinds of benefits
- provide two new ways to trigger the splitting of pensions on relationship breakdown

To find out the status of this proposed new law, check the Bill Status Chart on Manitoba's Legislative Assembly website at www.gov.mb.ca/legislature/bills/billstatus.pdf.

For more information about obtaining a division of pension benefits under *The Pension Benefits Act*, contact:

Pension Commission of Manitoba
1004 - 401 York Avenue
Winnipeg MB R3C 0V8
Phone: 945-2740
Fax: 948-2375
Toll free: 1-800-282-8069 (Ext. 2740)

The Family Property Act

Occupational pensions not covered by *The Pension Benefits Act* can be shared under *The Family Property Act*, which deems pensions to be family assets. For more details about the division of family assets, see pages 56 to 58.

Often the court will direct that this kind of pension be shared by ordering the pension plan member to pay his or her spouse or common-law partner a share of the pension if and when the member receives it.

Federally regulated pensions are shared under *The Family Property Act*. For more information about federally regulated pensions, contact the Office of the Superintendent of Financial Institutions Canada toll free at 1-800-385-8647; website: www.osfi-bsif.gc.ca.

CHAPTER 10

FAMILY VIOLENCE

SPOUSAL OR PARTNER ABUSE

Spousal or partner abuse is usually violence or threats of violence, and includes physical, sexual, emotional or psychological abuse. These wrongful acts are committed against a person by his or her spouse, common-law partner, boyfriend, girlfriend or other intimate partner, past or present. In an abusive relationship, the abused person usually fears the abuser (or at least the abuser's behaviour) and often changes his or her own behaviour, giving up the right to be a full and equal partner in the relationship, to keep the peace.

Under the law, no one has the right to abuse another. This abuse may be physical, sexual, emotional or psychological. There is help available for victims of abuse. For more information, call the **toll free provincial information/crisis line at 1-877-977-0007**. Chapter 16 also contains a list of shelters and community resources for victims of domestic violence. In 2004, the NorWest Community Health Centre in Winnipeg, with assistance from Legal Aid Manitoba, Manitoba Justice and Manitoba Family Services and Housing, opened A Woman's Place, to provide support and legal services to women who have experienced domestic violence. Services are free of charge. A Woman's Place is located at

200 – 323 Portage Avenue
Winnipeg MB R3B 2C1
Phone: 940-6624
Fax: 940-1971
E-mail: iwcs@mts.net

There is a cycle of violence in most abusive relationships. It has three distinct phases: a tension-building phase, an explosive incident or phase and a honeymoon phase. Unless the cycle is broken, the abuse will happen more and more frequently and will become more and more severe.

Children who witness abuse in their families—even if they themselves are not the targets—can suffer a great deal. They often grow up believing that abuse is part of a normal relationship and many become abusers or abuse victims themselves.

If a spouse, partner or child is being abused, both criminal and civil law offer assistance and protection. Each branch of the law provides different remedies. It may be necessary to use both systems for the best available protection.

Criminal law is intended to stop crimes or offences from being committed and punish offenders. Usually, the police lay charges and a Crown attorney will prosecute the case in court.

Under criminal law, once someone is arrested and charged with abusing his or her spouse or partner, the court can impose conditions on the alleged abuser, until the charge is dealt with in court. The conditions may include no contact or communication with the victim or forbidding the alleged abuser from using alcohol, or drugs, etc.

Civil law is used to settle disputes between individuals and can also provide protection for an individual. Those who want the assistance and protection of civil law must apply to the court

and hire their own lawyers if they wish to be represented.

Civil Law Protection

Spouses or partners who are being abused, or who fear they may be abused, may apply to court for an order of protection, sometimes called a restraining order. These orders may forbid the abusing spouse from certain behaviour, such as making harassing telephone calls.

Until September 30, 1999, *The Family Maintenance Act* provided for these orders. *The Domestic Violence and Stalking Prevention, Protection and Compensation Act* has replaced the protective relief provisions of *The Family Maintenance Act*. It provides victims of domestic violence and stalking with greater protections and options under the law.

This law creates two different types of orders: *protection orders* and *prevention orders.*

A **protection order** can be obtained quickly, simply and inexpensively, without notice to the alleged abuser or stalker (the *respondent*). Applications can be made in person. Applications can also be made by telephone with the help of a police officer or a lawyer. Anyone applying will have to provide evidence under oath about the stalking or domestic violence. Protection orders may include any of the following provisions necessary for immediate protection:

- prohibit the respondent from coming to the applicant's home or workplace or that of other specified persons
- prohibit the respondent from following the applicant or others
- prohibit the respondent from contacting or communicating with the applicant or others, directly or indirectly
- give the applicant or respondent possession of necessary personal effects
- provide peace officer assistance to remove the respondent from premises and/or to ensure the orderly removal of personal effects
- require the respondent to turn over weapons and authorize the police to search for and seize weapons

After a protection order is made, the respondent will be notified. The respondent will then have 20 days to ask the Court of Queen's Bench to set it aside and will have the opportunity to present evidence.

Prevention orders, made by judges of the Court of Queen's Bench, may include any of the measures outlined above. The court can order additional measures to protect the applicant and deal with the domestic violence or stalking, including:

- allowing the applicant sole occupation of the family residence
- giving temporary possession of specified personal property, such as household goods, furniture or vehicles
- seizing items used by the respondent to further the domestic violence or stalking such as cameras, video cameras, computers and other recording equipment
- recommending the respondent obtain counselling
- prohibiting the respondent from damaging or dealing with property in which the victim has an interest
- ordering the respondent to pay compensation to the applicant for any monetary losses caused by the violence or stalking, such as expenses for counselling, security measures, moving or lost income

If the respondent uses a vehicle to further the stalking or domestic violence, a Court of Queen's Bench judge may suspend the respondent's driver's licence and prohibit the respondent from operating a motor vehicle.

If immediate protection is needed, an abused spouse or partner can apply for a temporary *(interim)* prevention order, sometimes without notice to the abusing spouse. Such a without-notice order will remain in effect for a limited time, until a judge can hear from both parties. For further information on family court proceedings, see Chapter 2, The Court System and Procedures and Alternate Dispute Resolution.

The law also creates a new *tort* of stalking. This means stalking victims are now able to sue stalkers for damages they suffer. Previously, this could be done only if the stalking behaviour fit within an existing tort (*law*) such as assault or battery.

The Domestic Violence and Stalking Prevention, Protection and Compensation Act came into effect on September 30, 1999.

Formerly, under *The Family Maintenance Act*, a judge or magistrate could make an order forbidding the abuser to molest, annoy or harass the other spouse or partner *(a non-molestation order)*. A Court of Queen's Bench judge could make an order forbidding the abuser to enter the home or place of work of the other *(a prohibition order)*. These orders remain unchanged by the new law. They continue to be in effect until the court cancels the order or, in the case of a non-molestation order that had been granted by a magistrate or a Provincial Court judge, the person protected under that order gets a protection order or prevention order under the new law. In such a case, the new protection order or prevention order would take the place of the old non-molestation order

A person disobeying a civil order of protection can be brought before a judge and may be fined or imprisoned.

Civil orders of protection do not lapse after a certain period of time unless they specifically say so. Such orders are in effect until changed or ended by a court order, even if the parties reconcile.

Changes to *The Domestic Violence and Stalking Prevention, Protection and Compensation Act* were passed on June 10, 2004, and will come into effect October 31, 2005. These changes will allow people who have been in dating relationships to seek orders of protection. These also provide that protection orders will usually expire after three years. Contact Manitoba Justice's Domestic Violence Unit, Crime Victim Services Branch at 945-6851 in Winnipeg (toll free 1-800-282-8069, Ext. 6851) or Family Law Branch at 945-0268 in Winnipeg (toll free 1-800-282-8060) Ext. 0268 for further information about these changes.

⚖ Criminal Law Protection

Anyone, including a spouse or partner, who is attacked or threatened with violence should contact the police at once. Call 911 or, if 911 service is not yet available in your community, call your local RCMP detachment or police department or check the front of your community telephone directory for your local emergency phone number(s).

Spousal or partner abuse is a serious crime. Manitoba Justice has directed all police officers to lay criminal charges every time someone assaults his or her spouse or partner. This includes sexual assault. Charges must be laid when there are reasonable and probable grounds to believe the assault has taken place, even if there are no witnesses to the abuse other than the victim. The police, not the victim, are responsible for laying charges after an

offence has been reported.

The police can help the victim leave the home and get medical attention, if necessary. If an abuse victim and his or her children need a place to stay, a shelter may be available in their community. See Chapter 16 for a list of shelters and community resources for victims of family violence.

Once an abusing spouse or partner has been charged, the case will proceed in criminal court. If the alleged abuser pleads not guilty, the victim will ordinarily be required to be a witness for the Crown. In criminal prosecutions by the Crown, only the Crown can stop the proceedings once charges have been laid.

In Winnipeg, a special family violence court handles spousal or partner abuse prosecutions, physical and sexual abuse of children and elder abuse. This court is designed to deal sensitively with abuse prosecutions. The judges and Crown attorneys who appear in this court are particularly aware of the community resources available for both victims and offenders.

In many parts of the province, the Crime Victim Services branch of Manitoba Justice can help victims through a case and help them find other services at:

Winnipeg:	945-6851
Brandon and Area:	726-6515
Dauphin and Area:	622-5080
Morris and Area:	746-8249
Portage and Area:	239-3378
The Pas and Area:	627-8483
Thompson and Area:	677-6368
Selkirk and Area:	785-5213

Victims can also call toll free 1-866-4VICTIM (1-866-484-2846) to be connected with the appropriate crime victim service worker in their area.

A new law, *The Victims' Bill of Rights* gives crime victims in Manitoba a stronger voice in decisions affecting their case. Victims of certain types of very serious crimes are able to exercise certain rights at each stage of the legal process. These include the right to be consulted about bail, release conditions and discussions between a Crown attorney and the accused offender about how a charge is disposed of in court.

To find out more about *The Victims' Bill of Rights*, visit the Manitoba Justice website at www.gov.mb.ca/justice or contact your lawyer or Manitoba Justice, Crime Victim Services.

If an abuser is convicted, the judge will determine the sentence, looking at issues such as the seriousness of the crime and the abuser's previous criminal record. For example, the judge may order the abuser to attend counselling, may require him or her to keep away from the victim or may imprison the abuser.

As well as the protective orders described in the section on civil law, those who fear further contact with their abusive spouses or partners may apply for a *peace bond*. This order forbids one person to harass others and is similar to a civil order of protection except that it is handled in criminal court. It is also available to people other than spouses and common-law partners.

An application for a peace bond can be made at the nearest Provincial Court office. A peace bond is issued if the other person consents to a bond or a judge orders it after a hearing. The peace bond may include conditions such as no personal or telephone contact. A bond remains in effect for up to one year and a party who does not abide by its terms can face criminal charges.

CHILD ABUSE AND NEGLECT

Civil law in Manitoba allows the province to intervene to protect children. *The Child and Family Services Act* requires child and family services agencies and the police to take action to protect children. A child in need of protection is one whose life, health or emotional well-being is endangered by the actions or omissions of a person.

Anyone with reason to believe a child is in need of protection must report the situation to the child's parent or guardian or to a child and family services agency. If a child is in need of protection because of the actions of their parent or guardian, or if the parent or guardian is unknown, then the report must be made to an agency. See Chapter 12 for further discussion on protection of children. Child and family services agency offices are listed in Chapter 16.

Children are also protected under criminal law. The *Criminal Code of Canada* has a number of provisions to protect children and punish offenders. These include criminal negligence, assault and sexual assault and sexual offences against children.

In situations involving suspected physical or sexual abuse, child and family services agencies and the police must share information and work together. In some areas of the province, there is a special Child Victim Unit in the Crime Victim Services Branch, that addresses the special needs of children who must give evidence in court. See the previous page for telephone numbers of all the Crime Victim Services offices in Manitoba or call toll free 1-866-4VICTIM (1-866-484-2846) to be connected to the crime victim services worker in your area.

In Winnipeg, criminal court cases involving child abuse can be held in a special child-friendly courtroom, designed to make children feel as comfortable as possible. The witness box accommodates the presence of a support person during testimony. In addition to brightly coloured walls, the courtroom is equipped with closed-circuit television and other useful aids in helping young, vulnerable witnesses testify. Adjacent to the courtroom is a child's waiting room with an attached bathroom, games, toys, a television with closed captioning capacity and a TTY deaf-access telephone line.

If one parent believes his or her spouse or ex-spouse, partner or ex-partner is threatening a child's safety, the police or an agency should be contacted immediately. The concerned parent should contact a lawyer for help in obtaining a civil order of protection, a peace bond or other protective measures. If the alleged abuser has custody of the child or court ordered visits with the child (*access*), the court may consider changing custody, or changing or eliminating access if the judge believes it is in the best interests of the child.

CHAPTER 11

ENFORCEMENT OF SUPPORT, CUSTODY AND ACCESS

ENFORCEMENT OF SUPPORT

The Maintenance Enforcement Program (MEP)

In Manitoba, support payments in court orders and some written agreements can be enforced free of charge through the Maintenance Enforcement Program. The program receives and monitors payments, and takes steps to enforce missing payments *(arrears)*. The program can have its lawyers take maintenance enforcement action in court at no cost to the person owed support.

▪ Types of Support Provisions Enforced by the Program

All Manitoba orders for support payments, except orders made in divorce proceedings, are automatically filed with the Maintenance Enforcement Program and dealt with by an enforcement officer *(designated officer)*.

If a judge orders it, support orders made in Manitoba divorce proceedings can be enforced through the program. If the divorce order does not state payments are to be made through the Maintenance Enforcement Program, and the person owed support later wants payments made that way, he or she can ask the court to add this to the order. The order can be changed this way without notice to the person who is responsible for paying support. If someone wishes to change his or her divorce order in this way and does not have a lawyer, the program can advise how this can be done and where samples of the documents needed by the court can be obtained.

Persons entitled to support under orders enforced by the program, who do not want the program involved any more, must complete and sign an opt-out form and give it to the designated officer. Anyone receiving social assistance cannot opt out.

A person who has opted out of the Maintenance Enforcement Program may re-enroll by filing a completed and signed form and a sworn statement of the amount of support owing under the order or agreement (*arrears of support*). Opt-out and re-enrollment forms are available at Maintenance Enforcement Program offices.

Support orders and some agreements from other parts of Canada can be registered in Manitoba under *The Inter-jurisdictional Support Orders Act*. Once this occurs, the program enforces payments in the same way as if they had been ordered by a Manitoba court. Similarly, support orders and some agreements from a number of foreign countries can also be registered and enforced in Manitoba, as long as the country is one with which Manitoba has made maintenance enforcement arrangements (*a reciprocating jurisdiction*). To find out whether support

orders from a particular country can be enforced in Manitoba, check this government website: web2.gov.mb.ca/laws/regs/pdf/i060-010.03.pdf or contact:

Family Law Branch
Manitoba Justice
705 - 405 Broadway
Winnipeg MB R3C 3L6
Phone: 945-0268
Fax: 948-2004
Toll free: 1-800-282-8069 (Ext. 0268)

Written support agreements made in Manitoba can be enforced through the Maintenance Enforcement Program in the same way as court orders, as long as the parties agree in writing that payments will be made through MEP. The support agreement must also be suitable for enforcement through MEP. For example, the agreement must be worded clearly enough so the program can tell precisely how much support is owed.

▪ Monitoring Support Payments

Anyone paying support through the Maintenance Enforcement Program can do so by cheque or money order payable to the person or agency entitled to the payments, or by cash or debit card. Payments must be made through MEP. A record of the date and amount of the payment will be entered in the program's computer. It is extremely important for both parties to have all payments made through MEP, so an accurate record of payments can be kept. The computer is programmed to automatically flag missing payments *(default)* so enforcement action can be taken.

▪ Types of Enforcement Action

The designated officers of the Maintenance Enforcement Program have the power to demand information about the address and financial circumstances of persons required to pay support (support payors). This helps MEP take effective action if the support payor does not make the required payments (*defaults*).

There are many steps MEP can take to enforce support payments when default occurs, including:

- seizing (*garnishing*) some of the payor's wages directly from their employer
- garnishing the money in the payor's bank accounts (including joint accounts)
- seizing RRSPs or bonds
- garnishing payments the payor would usually receive under a pension plan, superannuation plan, life or fixed-term annuity policy or an accident, sickness or disability insurance policy
- garnishing the money to the payor's credit in his or her pension plan (pension benefit credits)
- garnishing money owed or seizing and selling property from a company that is controlled by a payor
- seizing and selling assets or property (Ex: cars, jewellery, land)
- garnishing employment insurance benefits, income tax refunds, old age security payments and certain other funds paid by the federal government
- asking the Motor Vehicles Branch to suspend the payor's driver's licence and registration privileges
- requiring the payor to appear before a court officer (a *deputy registrar*) to provide information about his or her financial and employment situation

- requiring the payor to appear before a judge or master of the court for a maintenance enforcement hearing *(show cause hearing)*

The designated officer decides what enforcement action is most appropriate for each case.

A defaulting support payor appearing for a show cause hearing must satisfy the court that he or she did not wilfully fail to make support payments. For example, there were extreme circumstances that made it impossible for the person to make payments. The person entitled to payments (*support recipient*) does not have to attend the hearing. Representatives from Manitoba Justice will appear on behalf of MEP at the show cause hearing to enforce the order.

At the end of the show cause hearing, the court may order payment of the arrears in full or through regular instalments (Ex: monthly payments). These default payments are in addition to the regular support payments already required under the order or agreement. The court may also fine the defaulting support payor up to $3,000 and/or order a jail term of up to 90 days.

It is important to note that payment of a fine or time in jail does not mean the defaulting support payor no longer has to pay the support arrears – all outstanding support payments continue to be owing to the support recipient.

A payor who wants to have arrears of support cancelled or payments reduced must ask a judge to cancel arrears and/or reduce payments (a *variation application*). This kind of court application is not heard in maintenance enforcement court. The payor must give the support recipient notice of a variation application. (See Chapter 7 and Chapter 8 on varying court orders.)

For further information about the Maintenance Enforcement Program, in Winnipeg contact:

Maintenance Enforcement Program
225 - 405 Broadway
Winnipeg MB R3C 3L6
Phone: 945-7133
Fax: 945-5449
Toll free: 1-800-282-8069 (Ext. 7133)
Websites:
www.gov.mb.ca/justice/family/payors.html
www.gov.mb.ca/justice/family/recipients.html

Outside Winnipeg, contact your nearest office of the Court of Queen's Bench or, where there is no such office, the Provincial Court. A complete list of court offices in Manitoba is shown in Chapter 16.

⚖ Enforcement of Orders Outside the Maintenance Enforcement Program

No one is required to have their support payments enforced through the Maintenance Enforcement Program (unless they are receiving social assistance). If a support recipient does not want to be enrolled in MEP, he or she should consult a lawyer to see what steps to take to enforce the order if payments are not made as required. While there are many enforcement options available to private individuals, they are more limited than those available through MEP.

⚖ Enforcing Support Provisions Against Persons Living Outside Manitoba

If a support payor lives outside of Manitoba, the order or agreement can be registered and enforced elsewhere in Canada, and even in another country as long as Manitoba has mutual maintenance enforcement arrangements with that country – a reciprocating jurisdiction.

It may also be possible for a support order to be recognized and enforced in some other countries that are not reciprocating jurisdictions, with assistance from private lawyers in those countries. The Maintenance Enforcement Program would not be involved in these cases.

For free assistance in sending an order outside of Manitoba to be enforced:

Maintenance Enforcement Program
225 - 405 Broadway
Winnipeg MB R3C 3L6
Phone: 945-7133
Fax: 945-5449
Toll free: 1-800-282-8069 (Ext. 7133)

Manitobans outside of Winnipeg can also contact the nearest office of the Court of Queen's Bench or, where there is no such office, the Provincial Court. A complete list of court offices in Manitoba is shown in Chapter 16.

ENFORCEMENT OF CUSTODY AND ACCESS

If a parent has a problem enforcing custody or access, criminal charges may apply or civil court enforcement options may be available, depending on the circumstances of the case. (See Chapter 5 – Custody, for information about possible changes to the *Divorce Act*.) It is expected that the federal government will also propose changes to the *Criminal Code of Canada*, so that the offence of parental child abduction will include abduction in contravention of either a custody order or a parenting order.

⚖ The Crime of Parental Child Abduction

If one parent takes or keeps a child under 14 years of age away from the other parent without the other's consent, he or she may be charged with parental child abduction (kidnapping) under the *Criminal Code of Canada*. It doesn't matter if there is a Canadian court order of custody or not. Special consent from the Manitoba Department of Justice must be given before a parental child abduction charge can be laid where there is no Canadian custody order.

There are a number of situations where a charge of abduction may be laid, even if there is no Canadian custody order:

- The parents and child have been living together and suddenly one parent takes the child out of Manitoba without the other's consent, intending to deprive the other of his or her rights as a parent.
- The parents are separated and previously agreed that their child will live with one of them. Unless the parent who has been living with the child consents, the other parent cannot later decide to keep or take the child away, unless he or she gets a court order.
- There is a foreign custody order not being complied with.

When the court has ordered that one parent has custody of a child and the other parent takes away or keeps the child without the custodial parent's consent, that parent may be charged with abduction. A charge may also be laid if one parent with joint custody takes away or keeps the child without the consent of the other joint custodial parent.

A parent charged with abduction may have a defence to the charge if the action was taken to protect the child or the parent from immediate danger, or if the other parent agreed he or she could take or keep the child. It is not a defence to a charge of parental child abduction to say the child wanted to go or stay with the abducting parent.

Parents who feel ongoing custody arrangements no longer meet their child's needs must ask the court to make a custody order or change the existing order if they cannot agree on a new custody arrangement. Where a custody order exists, it is best to have a new, changed order prepared, even if parents agree to a new custody arrangement.

Where an abduction charge is laid, a Canada-wide warrant may be issued for the arrest of the abducting parent. This means the parent can be arrested anywhere in Canada and returned to Manitoba to face the criminal charge. If convicted of the charge of parental child abduction, a parent may be imprisoned for up to 10 years.

Additional Police Assistance

Even if it is not possible or appropriate for a parent to be charged with parental child abduction in a particular case, the police may still be able to assist a parent by locating and speaking to the other parent who has taken or is keeping the child.

If a child has been taken away by one parent without the other custodial parent's consent, the police and a lawyer should be contacted immediately. In Winnipeg, between 8:30 a.m. and 4:30 p.m., contact the Missing Persons Unit Supervisor at 986-8091. Outside these hours, contact the Winnipeg Police Service Communications Centre at 986-6222 and seek advice from the duty officer. In an emergency, call 911.

Outside Winnipeg, parents should contact the local municipal police service or RCMP detachment for assistance in abduction cases.

Enforcement by the Civil Courts

In many cases it may not be appropriate or possible for the police to charge a parent with parental child abduction. There are, however, many ways for the civil (*non-criminal*) court to enforce custody or access orders, even in international abduction cases.

- **The Hague *Convention on the Civil Aspects of International Child Abduction***

If a parent abducts a child from Canada (or to Canada from another country) an international treaty called The Hague *Convention on the Civil Aspects of International Child Abduction* (The Hague *Convention*) may be of assistance in having the child returned. The treaty allows custody rights (whether or not there is an order) and, to a lesser extent, it also allows access rights to be enforced internationally when the abducted child is under 16 years of age.

The Hague *Convention* requires that children wrongfully removed from the country of their residence or wrongfully kept in another country, when the left-behind parent has custody, be promptly returned to his or her home country.

There are some limited exceptions to the requirements in The Hague *Convention* to return children, such as if a child would be harmed if returned or if the child wishes to remain in the other country and is old enough to have his or her views considered.

A much less difficult test applies when requests for return of a child are made more than a year after the child's removal – the court in the other country can refuse to return the child if it feels the child is now settled in the new country. For that reason, it is extremely important to request the return of the abducted child at the earliest opportunity.

About 75 countries around the world have now signed and agreed to comply with the terms of The Hague *Convention* and the convention is in effect between Canada and 68 of these countries. For more information about how to request a child's return and to learn if The Hague *Convention* is law in the country where a child has been taken, see the website for the Permanent Bureau of The Hague Conference at: hcch.e-vision.nl or contact:

Director, Family Law Branch
Department of Justice
705 - 405 Broadway
Winnipeg MB R3C 3L6
Phone: 945-0268
Fax: 948-2004
Toll free: 1-800-282-8069 (Ext. 0268)

- **Manitoba's *Child Custody Enforcement Act***

The Child Custody Enforcement Act can help a parent enforce a custody or access order where the child is under 18 years of age. If the child is still in Manitoba, or has been brought to Manitoba, a parent entitled to custody or access under an order can ask the court for an enforcement order. The enforcement order may require information about the location of the child to be provided to the court, or require the police to help the parent get the child back from the abducting parent or help the parent exercise access times set out in the order. The court may refuse to enforce a custody or access order if there is a concern that doing so would cause the child serious harm. *The Child Custody Enforcement Act* can be viewed at: web2.gov.mb.ca/laws/statutes/ccsm/c360e.php.

In addition, when a parent takes a child away from the parent given custody in a court order, or denies court ordered access, contempt proceedings may be started to bring the abducting or access-denying parent before the court that made the order. Contempt proceedings may be brought any time a person disobeys a court order. The court may impose a fine or jail sentence, or both, or order additional access times if satisfied the order has been disobeyed. If access is being denied or not being exercised, the court may order the parent who is not obeying the order to pay compensation to the other parent.

If a Manitoba child has been taken to another province, civil court proceedings to enforce the custody or access order and have the child returned must be taken in the other province. Usually parents entitled to custody must hire their own lawyers to enforce the custody or access order in that province. In most provinces, the court can refuse to enforce the order if satisfied that doing so would cause the child to suffer serious harm or if satisfied that the child has no real connection with Manitoba because of the length of time he or she has been living elsewhere.

⚖ Other Services when a Child is Abducted

Even if a child is abducted to a country that is not a party to The Hague *Convention*, an application to a foreign court to enforce a Manitoba court order may still result in an order for the return of the child. Parents should obtain legal information and advice as to their options from a lawyer in the country in question.

Foreign Affairs Canada can provide parents of abducted children with a range of assistance, including names of lawyers and information on the legal system in the other country, certification of documents, ascertaining the welfare of the child, obtaining passport/visa information and reporting on the status of court proceedings. They have published an infor-

mation booklet, *International Child Abductions: A Manual for Parents.* This booklet can be accessed on the Internet at: www.voyage.gc.ca/main/pubs_menu-en.asp#5. For assistance, contact:

Foreign Affairs Canada
1-613-996-8885
Toll free: 1-800-267-6788

International Social Service Canada (ISS Canada) is a non-profit, non-governmental agency that helps resolve family difficulties of an international nature, including child abductions. It is part of an international network of social service agencies.

ISS Canada has been of great assistance to many parents in international child abduction situations, working through its associated agencies in other countries to help parents reach agreements for the return of children, or at least arrangements for parents to communicate with their children. The agency's role can be particularly valuable when a child is taken to a country where the parent remaining in Manitoba may have few legal rights to enforce a custody or access order. For more information, contact:

ISS Canada
Suite 714
151 Slater Street
Ottawa ON K1P 5H3
1-613-236-6161
Fax: 1-613-233-7306
E-mail: issc@magma.ca
Website: www.issc-ssic.ca

Another organization that can assist parents when a child is abducted is Child Find Manitoba. Child Find operates prevention programs, assists parents in contacting the police, explains the involvement and role of the police, encourages and supports parents of abducted children, and provides services to register abducted children and publicize their plight. For more details, contact:

Child Find Manitoba, Inc.
343-800 Portage Avenue
Winnipeg MB R3G 0N4
Phone: 945-5735
Fax: 948-2461
Toll free: 1-800-532-9135
E-mail: mail@childfind.mb.ca
Website: www.childfind.mb.ca

CHAPTER 12

PROTECTION OF CHILDREN

The Child and Family Services Act provides services to protect children and help parents care for their children. These services include counselling, education, financial assistance, homemaker and day care services.

AUTHORITIES

When it came into force on November 24, 2003, *The Child and Family Services Authorities Act* created a new child welfare system in Manitoba. This law allows authorities for the Northern and Southern First Nations and a Metis authority to develop and deliver Aboriginal child welfare services for their own people. A general authority was also created for all others. For more information on this new child welfare system, go to the Aboriginal Justice Inquiry - Child Welfare Initiative website at: www.aji-cwi.mb.ca.

Child and family services agencies provide services throughout Manitoba under the authority of their respective authorities. The four authorities must designate agencies to provide joint intake and emergency services in certain geographic areas of the province. A family's first contact with the child welfare system will usually be through one of these designated intake agencies. However, there is a process that allows adult family members to choose either the authority that is culturally appropriate or another authority as a service provider. All child and family services agencies and their primary addresses and telephone numbers are listed in Chapter 16.

VOLUNTARY SERVICES

A parent who wishes to temporarily place a child in agency care or permanently surrender guardianship of a child may ask a child and family services agency to enter into a written agreement to do so.

⚖ Voluntary Placement

Parents who are unable to care for their child may enter into a written agreement with a child and family services agency to have their child placed in care for a period of time *(voluntary placement agreement)*. Such agreements allows the agency to care for the child for up to 12 months. The parents must give the agency financial information and may have to contribute all or part of the costs of caring for the child.

A voluntary placement agreement can be renewed until the child reaches age 18, or if the child:

- has a mental disability defined in *The Vulnerable Persons Living with a Mental Disability Act*
- is suffering from a chronic medical disability requiring treatment that cannot be given if the child remains at home
- is 14 years of age or older and beyond the control of the parent or guardian entering into the agreement

When an agreement is in place because of a temporary illness or misfortune, the agreement and any renewals cannot last for more than 24 months in total.

The parents or the agency may cancel a voluntary placement agreement at any time by signing the required form.

⚖ Voluntary Surrender of Guardianship

A parent may agree to give up care and custody of his or her child permanently by signing a written *voluntary surrender of guardianship* agreement with a child and family services agency.

Once such an agreement is signed, the agency becomes the legal guardian of the child. That means the agency takes the place of the child's parents and makes decisions about the child's care, including placing the child for adoption. A parent can withdraw from this agreement within 21 days of signing it, but only if written notice is given to the agency. If the parents of a child are married or are common-law partners, both must sign the agreement. If the parents are not married and are not common-law partners, the mother alone may sign it. To qualify as common-law partners under this law, the couple needn't have lived together for any particular length of time, but need only have cohabited in a conjugal relationship of some permanence. Where the mother alone signs a voluntary surrender of guardianship agreement, the agency cannot place the child for adoption if the father has applied to court for an order that he be declared the father of the child.

A decision to enter into a voluntary surrender of guardianship agreement is very serious and should be made only with professional assistance and careful consideration of all other options. Such help is available from the child and family services agencies listed in Chapter 16. It is also wise to seek legal advice about such an important decision. See Chapter 1, Legal Information and Legal Advice, for information about finding a lawyer.

PROTECTION SERVICES

Every person in Manitoba has a duty to help protect children. Anyone who has reasonable grounds to believe that a child is or might be in need of protection, must report the information to an agency or to a parent or guardian of the child. In some cases, the report can only be made to an agency. Another way Manitobans can help protect children is by using Cybertip.ca to report sexual exploitation of children on the Internet. Cybertip.ca was set up by Child Find Manitoba in 2001, to give the public a way to report illegal content and activities on the Internet, such as child pornography, attempting to lure a child for a sexual or illegal purpose, child sex-tourism or child prostitution. The website, found at www.cybertip.ca, is now in use across Canada. Anyone who wishes to make a report can do so by either filling out the online reporting form, or by calling toll free at 1-866-658-9022.

Child and family services agencies must investigate any information indicating a child is in need of protection and must take any necessary steps to protect the child.

Sometimes, after an investigation, no action is required or an agency may offer voluntary services. At other times, short-term or emergency services may be needed until a parent or guardian can resume caring for the child. Continuing supervision by an agency may be required. This can be arranged informally or the agency can apply to court for an *order of supervision*. This order gives the agency the right to enter the family home to provide guidance and counselling and to ensure the child is receiving proper care.

Apprehension of Children

When an agency believes it is necessary to remove a child from the family home to protect the child, it can act without the agreement of the parents. This removal of the child *(apprehension)* can be done without a warrant or court order. If, after apprehending the child, the agency decides the child should not be returned to the family home, it must file an application with the court within four days for a hearing to be set. At the same time, the agency must advise the court what arrangements it proposes for the parents to visit with the child until the hearing takes place. If the parents disagree with the agency's plan for visits, they may ask the court to decide what arrangements are appropriate. The agency must show the court that any restrictions on visits are reasonable.

When an agency believes a child is abused or in danger of being abused, the agency may ask the court for an order to remove the suspected abuser from the home or an order preventing the suspected abuser from having any contact with the child. Such an order may prevent apprehension of the child or could allow the child to be returned home.

Protection Hearings

After filing the application for a protection hearing with the court, the agency must give at least two days' notice of the hearing to:

- the parents or the guardians
- the child, if he or she is 12 years of age or older
- the person in whose home the child was living at the time of apprehension
- the agency serving the appropriate First Nation if the child is or could be registered as a status Indian

The notice must include the reasons for the apprehension. The notice also tells parents or guardians that they must provide the court and the agency with certain information about their financial circumstances. The court can order the parents or guardians to pay support for the child while the child is in temporary agency care. If a parent or guardian fails to provide the financial information, the court may order them to pay the agency up to $5,000, as well as to make support payments.

An initial protection hearing must be held within seven days of filing the application, or at the next sitting of the court. Protection hearings can take place in the Court of Queen's Bench (Family Division) or in Provincial Court. Usually uncontested applications in the Court of Queen's Bench (Family Division) are heard by a *master* of that court, not a judge.

All contested cases must include at least one *pre-trial conference*. A pre-trial conference is a meeting of the parties, their lawyers and a judge to try to resolve the case or at least narrow the issues for trial, and to ensure the matter is ready for trial.

At the trial, a judge must decide whether a child is in need of protection and, if so, what order should be made to protect the child. The agency, through its lawyer, will ordinarily present evidence supporting the apprehension and the plan for the child.

Parents and guardians have the right to be represented by a lawyer, give evidence themselves and call witnesses to give evidence on their behalf. In fact, the agency may require the parents to give evidence even if they would prefer not to, by serving the parents with notice to that effect. Because these proceedings are very serious, parents or guardians should always seek legal advice.

Children in these cases who are 12 and older may also participate in the proceedings and/or have legal representation. Others who are entitled to be notified may ask the court for the right to participate.

After hearing all the evidence and submissions, a judge who finds that the child is in need of protection, may:

- order that the child be returned home under agency supervision, subject to any conditions and for the period of time the judge considers necessary
- order that the child be placed with another person or that another person have guardianship, subject to any conditions and for the period of time the judge considers necessary
- make a *temporary order of guardianship*
- make a *permanent order of guardianship*

Temporary Order of Guardianship

Under this type of order, the agency becomes the child's guardian and will be responsible for the child for a specific period of time. A temporary order of guardianship cannot be longer than six months for a child who was under five years of age at the date of apprehension and 12 months for any child between five and 12 years of age at the date of apprehension. For older children, temporary orders of guardianship cannot exceed 24 months. In addition, there are limits on the total time that younger children can be in agency care under temporary orders of guardianship.

Unless the order states otherwise, the parents are entitled to reasonable visits with the child. If the agency and the parents cannot agree on visits, either may ask the court to determine appropriate visiting arrangements.

While a temporary order of guardianship is in effect, the agency and the family are expected to try to work together to resolve the problems that required the child to be in agency care. If they are able to do so before the order ends, the parents or the agency may ask the court to terminate the order and have the child returned home. However, if after trying to work with the family, the agency does not think the child should be returned home, it may ask the court to extend the temporary order of guardianship for another specific period. In some cases, the agency may ask to be made the permanent guardian of the child.

Permanent Order of Guardianship

Where a judge makes a permanent order of guardianship, the agency becomes the child's permanent guardian, taking the place of the parents. The agency makes all decisions about the child's care and may place the child for adoption. The parents' rights and responsibilities with respect to the child are ended.

It is entirely up to the agency to determine whether the parents will be allowed to visit the child. However, if the child has not been placed for adoption, the parents may apply to the court for an order allowing them visits. The court will decide what visiting arrangements, if any, should be made.

Although the rights and responsibilities of the parents end when a permanent order of guardianship is made, an agency or a parent may ask the court to terminate the permanent order. An application by a parent may be made only if the child has not been placed for adoption and if at least one year has elapsed since the parent's right to appeal the permanent order of guardianship would have ended or, if there was an appeal, at least one year since the appeal was finalized.

Any order made by a judge in a protection hearing may be appealed to the Manitoba Court of Appeal within 21 days of the signing of the order.

THE CHILDREN'S ADVOCATE

The Office of the Children's Advocate was established in 1992. The duties of the Children's Advocate include representing the rights, interests and views of children receiving or entitled to receive services under *The Child and Family Services Act* or *The Adoption Act*. The Children's Advocate does not represent individual children in court proceedings.

The Children's Advocate reviews and investigates complaints about services provided or available to children under these acts. A child or any interested person on behalf of a child, including family, foster parents or agency staff, can ask the Children's Advocate for assistance.

The Children's Advocate can be contacted at:

102-500 Portage Avenue
Winnipeg MB R3C 3X1
Phone: 945-1364
Fax: 948-2278
Toll free: 1-800-263-7146

THE CHILD ABUSE REGISTRY

The province's Director of Child and Family Services maintains a Child Abuse Registry to provide information on child abusers to people such as employers in the child care area and child and family services agencies. The registry lists:

- persons who have been found guilty of an offence involving child abuse or who pleaded guilty to such an offence
- persons found, in a child protection hearing, to have abused a child
- persons found, by an agency's child abuse committee to have abused a child

There is a process to notify alleged abusers in certain cases and for objections to listing a person's name to be heard.

All names and information on the Child Abuse Registry are confidential. Access to the registry is allowed only to certain people, in specific circumstances. The general public does not have access to this registry.

A person applying for a job that involves contact with children or someone who wishes to volunteer at a school, for example, may be asked to sign a consent so that the Child Abuse Registry can be checked for their name. The fact that a person's name is not on the Child Abuse Registry is no guarantee that the person does not pose a risk to children.

More information about the Child Abuse Registry and about child protection services in Manitoba may be obtained from the director of Child and Family Services at:

Child Protection Branch
Department of Family Services and Housing
201 - 114 Garry Street
Winnipeg MB R3C 4V5
Phone: 945-6967 (Child Abuse Registry)
Fax: 948-2222 (Child Abuse Registry)
Phone: 945-6964 (General)
Fax: 945-6717 (General)
Toll free: 1-800-282-8069 (Ext. 6964)

CHAPTER 13

ADOPTION

An order of adoption made by a Manitoba court ends the legal relationship between a child and his or her natural parents and begins a new relationship with the adoptive parents. All rights and responsibilities existing between the child and the natural parents end when the child is adopted. The adoptive parents take on all those rights and responsibilities as if the child had been born to them. Adopting parents may keep the child's last name or change it as outlined in *The Change of Name Act* and *The Vital Statistics Act* (See Chapter 14, Change of Name).

On March 15, 1999, a new law (*statute* or *legislation*) governing adoptions came into effect in Manitoba. *The Adoption Act* replaced parts of *The Child and Family Services Act* and made some changes in the way adoptions are conducted in Manitoba.

Child and family services agencies may provide adoption services. Non-profit adoption agencies may also be licensed to provide virtually the same adoption services. Social workers in private practice can also contract with agencies to conduct an adoption assessments (*homestudy*). Agencies can charge people applying to adopt a child set fees for certain adoption services. The fees will depend on the applicants' income.

The Adoption Act also changes some of the restrictions and time periods involved in completing an adoption. For example, birth parents who are minors can place their children for private adoption and have it completed without waiting until they become adults.

The waiting period for obtaining consents for adoption is 48 hours after the birth of a child. There are strict guidelines for ensuring that those involved in an adoption are given clear information about their rights and their options. The act also says birth fathers will usually be notified about a proposed adoption.

Children to be adopted who are 12 years of age or older are entitled to information and counselling about the proposed adoption. Children 12 and over must also give their consent.

The Adoption Act was amended January 1, 2003, to allow same sex couples to apply jointly to adopt a child. Another change to *The Adoption Act* is that two people who are neither spouses nor common-law partners can now apply jointly for a de facto adoption and two members of a child's extended family (such as a grandparent and an aunt) can apply jointly for an extended family adoption. There are additional home-study requirements for these kinds of adoptions, to ensure the stability of the adopting parties' relationship and their commitment to jointly care for the child. These changes were part of *The Charter Compliance Act*.

TYPES OF ADOPTION

There are seven types of adoption in Manitoba:

⚖ Adoption of a Permanent Ward

A husband and wife, common-law partners or a single adult may apply to a child and family services agency to adopt a child who is a permanent ward. A child may become a permanent ward of an agency through a *voluntary*

surrender of guardianship or a *permanent order of guardianship* (see Chapter 12, Protection of Children).

A qualified social worker investigates by conducting a *homestudy* whether applicants are suitable and capable of being adoptive parents. The names of approved applicants and children available for adoption are entered on a central adoption registry. Once a child has been placed in the home, the adopting parent(s) must apply to court for an *order of adoption*. The application cannot be made until the child has lived in the home for six months, unless the guardian agency authorizes a longer or shorter time.

Only child and family service agencies, not private adoption agencies, can handle the adoption of children who are permanent wards.

Private Adoption

A child may be privately placed for adoption by the birth parent or, if the parents are deceased, by a court-appointed guardian. A child and family services agency or a licensed adoption agency must be notified in writing before the placement. The agency must investigate and approve the placement through a homestudy. The agency must give information about rights and options to the person placing the child for adoption. The agency must also gather information about the child and the birth family. The adopting parent(s) can apply to court for an order of adoption no earlier than 30 days and no later than six months after all consents to the adoption have been given.

International Adoption

Manitoba is part of an international treaty that outlines the process for adoptions involving some countries. The treaty is called the *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*. The convention outlines what procedures must be followed for such things as obtaining consents and preparing the homestudy.

International adoptions handled in Manitoba that are not covered by the Convention will follow essentially the same process as adoptions of children who are permanent wards.

Manitobans who are applying to adopt in another country must notify the province's director of Child and Family Services, who must then verify that the application has been completed and accepted in the other country, and that country supports the adoption.

De Facto Adoption

Anyone can apply to court to adopt a child whom he or she has cared for and maintained for at least two consecutive years. A husband and wife, common-law partners or any two persons may apply together to adopt a child where, at the time of the application they are jointly caring for the child and one of them has cared for and maintained the child for at least two consecutive years. Notice of the application must be given to the child's parents and the agency in the area where the applicant(s) live. That agency must conduct an investigation and report to the court about the adopting parent(s).

Extended Family Adoption

A parent may place a child for adoption with one member, or jointly with two members, of the child's extended family. The approval of the province's director of Child and Family Services is not required for such an adoption unless the child is to be placed outside Manitoba. An application for this type of adoption may be made no earlier than six months and no later than 12 months after the date of placement. The judge may ask an agency to conduct an investigation and report to the court.

Step-parent Adoption

A person married to the parent of a child or who is a common-law partner of that parent may apply to court to adopt the child if the child is living with and being cared for by them. This can be done jointly with the parent or alone but with the parent's consent. When a step-parent applies on their own to adopt the child of their spouse, the spouse's rights as a parent do not end with the order of adoption. The approval of the province's director of Child and Family Services is not required for this type of adoption.

Notice of an application for a step-parent adoption must be given to both of the child's parents, and the parent who does not have custody of the child may oppose the application in court. If an order of adoption is granted, this other parent may apply to the court, either as part of the adoption application or separately, for an order allowing visits with the child (*access*). The judge may ask an agency to conduct an investigation and report to the court.

Adoption of an Adult

An adult can be adopted where the adopting person is older by a reasonable number of years and the reason for the adoption is acceptable to the court. The only consent required is that of the person to be adopted. An order of adoption of an adult may be made without notifying the director of Child and Family Services and without a report from an agency.

POST-ADOPTION REGISTRY

The province's director of Child and Family Services maintains the Post-Adoption Registry, which:

- facilitates the release of information to adoptees, birth parents, adoptive parents, birth siblings and adoptive siblings who are eligible to register
- searches for and facilitates contact between parties to an adoption
- keeps records about parties' wishes to have identifying information disclosed about them or to have personal contact with one another

The Post-Adoption Registry charges fees for registering and for searches for any party.

For adoptions granted under previous legislation (*The Child and Family Services Act* or its predecessors) birth parents, adoptive parents, adult adoptees and adult birth siblings may register their wish to obtain information about the other parties to the adoption. Information will only be shared when two or more parties to an adoption have registered similar wishes. Registration is entirely voluntary and may be withdrawn at any time.

For adoptions granted under *The Adoption Act*, anyone who is entitled to register on the Post-Adoption Registry can request and obtain information about anyone else who is entitled to register in respect of the same adoption, unless that party has filed a written objection (*disclosure veto* or *contact veto*).

For more information about the Post-Adoption Registry, contact

Child Protection Branch
Post-Adoption Registry
201 - 114 Garry Street
Winnipeg MB R3C 4V5
Phone: 945-6964
Fax: 948-2949
Toll free: 1-800-282-8069 (Ext. 6964)

Website: www.gov.mb.ca/fs/childfam/registry.html

For more information about adoptions generally, contact any child and family services agency (See Chapter 16) any licensed adoption agency, the director of Child and Family Services (See Chapter 12, Protection of Children for the director's contact information) or visit the Family Services and Housing website at: www.gov.mb.ca/fs/childfam/adoption.html

CHAPTER 14

CHANGE OF NAME

The Change of Name Act outlines how to change an existing name and how marriage, common-law relationships, divorce or separation affects an existing name. *The Vital Statistics Act* sets out how names must be shown on birth registrations.

In general, anyone 18 years of age or over who has lived in Manitoba for at least three months may apply to the director of Vital Statistics to change his or her name.

Once the prescribed fee has been paid and an application accepted, the Vital Statistics Agency will issue a change of name certificate, amend birth and marriage records to reflect the new name and publish notice of the change in the *Manitoba Gazette*. The Vital Statistics Agency will forward this information to another province if the person was born or married there, but the person will be responsible for any costs to change birth or marriage records in that province. The person changing their name must make arrangements to change their name on other documents and records—such as a driver's licence and credit cards.

CHANGE OF NAME AT TIME OF MARRIAGE OR COMMON-LAW RELATIONSHIP

The law in Manitoba does not require a person to change their last name when they get married. Both spouses have the right to use:

- their own last name
- their spouse's last name
- a combination of both last names, hyphenated or not, in any order they choose
- their spouse's last name, with their own last name as a given or middle name

For example, when Nancy Smith and Brian Jones marry, one or both of them can continue to be known by their surnames before marriage or choose to be known by:

- Smith Jones or Jones Smith
- Smith-Jones or Jones-Smith
- Jones or Smith

A married person does not have to apply to the Vital Statistics Agency for a change of name in any of the above circumstances. The person simply has to use the chosen last name (Ex: Nancy Smith Jones or Brian Jones-Smith). If a new name is used, a letter with a copy of the marriage certificate should be sent to record holders (such as the Motor Vehicles Branch and credit card companies) so documents and records (such as a driver's licence, credit cards) can be changed to the new name.

As of January 1, 2003, common-law partners can assume their partners' surname or combine it with their own, in the same way that people can when they marry. A formal name change application is not required, but common-law partners wishing to do this must file a declaration with the Vital Statistics Agency. To qualify as common-law partners under *The Change of Name Act*, a couple must either have registered their relationship with the Vital Statistics Agency or be cohabiting in a conjugal relationship of some permanence.

CHANGE OF NAME DURING MARRIAGE OR SEPARATION

People who changed their last name at the time they married must file a change of name application and obtain a legal change of name if they want to change their name during the marriage. This is so, even if the person wants to resume the use of their last name before marriage or birth surname.

CHANGE OF NAME AFTER DIVORCE OR TERMINATION OF COMMON-LAW RELATIONSHIP OR ON DEATH OF A SPOUSE OR COMMON-LAW PARTNER

A divorced or widowed person may resume using the surname they used before marriage, or at birth, without a formal name change through Vital Statistics. On the termination of a common-law relationship or the death of their common-law partner, a person may also resume using the surname they used before the relationship, so long as the person files a declaration with the Vital Statistics Agency.

A CHILD'S LAST NAME

A child's birth must be registered with both a given name and a surname, made up of the letters "a" to "z", accents from the English or French languages and may includes hyphens and apostrophes. If the parents are not married, information about the father can only be included on the birth registration if the parents complete a joint written request and submit it to the Vital Statistics Agency.

⚖ Changing the Name of a Child

Under *The Change of Name Act*, the written consent of a child over 12 years of age is required before his or her name can be changed.

When parents have joint custody of their children either parent may apply to change the given names or last name of the children. The other parent must consent in writing to the name change. Under *The Family Maintenance Act*, parents who have lived together after the birth of their child, regardless of whether they are married, have joint custody of the child unless the court orders one parent have sole custody. If the parents of a child have never lived together, then the parent the child lives with has sole custody. (See the introduction to Chapter 5, Custody.)

A parent with sole custody can apply to change a child's name but must give the other parent notice of the change of name application by registered or certified mail. The other parent can object (oppose the change) and apply to court for an order that the change of name not be granted. The parent will have to prove that the requested change of name would not be in the child's best interests. In extraordinary circumstances, the director of Vital Statistics can process an application to change the name of a child without requiring the consent of a parent or notice to a parent.

Widowed parents may apply to the Vital Statistics Agency to change the name of any of their children under age of 18. Children over 12 would have to consent in writing to the proposed change.

When a child is adopted, the adoptive parents may choose to have the child keep the name he or she was given at birth, or change the first, middle and/or last name of the child, as long as they comply with the requirements in *The Vital Statistics Act*.

For more information contact:

Vital Statistics Agency
254 Portage Avenue
Winnipeg MB R3C 0B6
Phone: 945-3701
Service en francais: 945-5500
Fax: 948-3128
Toll free: 1-800-282-8069 (Ext. 3701)
E-mail: vitalstats@gov.mb.ca
Website: www.gov.mb.ca/cca/vital

CHAPTER 15

DEATH IN THE FAMILY

WILLS

A will is an important legal document which sets out who will receive *(inherit)* a person's property upon his or her death.

Naming an Executor

A will should appoint an *executor* to deal with the property (*estate*). The executor must look after paying the person's debts and other expenses of the estate, out of the estate. The executor is responsible for distributing the estate as set out in the will. There are laws, however, that can affect whether a person's property is inherited as directed in a will. These are discussed below. There are also laws that set out what an executor can and cannot do with the deceased person's estate.

When naming an executor, it is important to check and confirm the person is willing and able to assume the responsibilities involved.

Naming a Guardian

If a person has children under 18, his or her will should appoint a *guardian* to be responsible for the children's care in the event both parents die. The guardian may also be appointed to look after the children's financial affairs.

Naming a guardian in a will does not guarantee that person will be chosen if there is a dispute among friends and/or relatives who want to care for the children. Naming a guardian in a will does, however, give the court a clear indication of the parent's wishes and can carry substantial weight as the court decides who should be the children's guardian.

When naming someone as a guardian of children in a will, it is important to check and confirm the person is willing and able to assume the responsibilities involved.

Requirements for a Valid Will

Three requirements must be met before a will is valid in Manitoba:

1. The maker of the will must ordinarily be at least 18 years old. In a very few cases, the person may be younger.
2. The will must be in writing.
3. The signature of the maker of the will must be witnessed by at least two people unless:
   - the will is made by a member of the armed forces on active service or a sailor at sea
   - the will is written entirely in the handwriting of the person making it, and is signed and dated by that person – a *holograph will*.

The Wills Act of Manitoba permits a person to ask a court for an order declaring that a particular document is a valid will even though it does not meet these legal requirements. Before making such an order, a judge must be satisfied by the evidence that the document

contains the true wishes of the will-maker. To avoid the expense and difficulties involved in this type of court hearing, it is best to meet all the legal requirements when drawing up a will.

Usually, a person who witnesses the signing of a will (*witness*) cannot receive any benefits under the will. The witness's spouse or common-law partner cannot benefit from the will either. A person who is left a gift (*bequest*) in a will is known as a *beneficiary*.

A witness to a will can ask a court for an order that a gift to that witness or their spouse or common-law partner under the will is a valid gift.

Before such an order is made, a judge must be satisfied that neither the witness nor their spouse or common-law partner improperly influenced or pressured the person making the will to make this gift. Under these provisions of *The Wills Act*, common-law partners are considered to be any couples who are living together and have either registered their relationship with the Vital Statistics Agency or who are cohabiting in a conjugal relationship of some permanence. To avoid unnecessary problems, it is a good idea if the witnesses to the will are people who do not benefit from the will in any way.

If a person cannot read or sign his or her will, it can be read aloud, or signed on his or her behalf by another person or it can be signed with a mark. At least two other people must witness the signature or mark on the will.

Changing or Revoking a Will

After a will is made, it can be changed or invalidated in a number of ways.

If a person wants to make many changes to his or her will, it could be easiest to simply prepare a new will. If only a minor change is involved, such as naming a new person to act as executor, a simple document, known as a *codicil*, can be prepared. Like a will, a codicil must be witnessed by two or more people, unless it is entirely in the person's own handwriting and is signed and dated by that person (a *holograph codicil*).

When a will is invalidated or no longer of any effect, it is *revoked*. A will is revoked if the will-maker:

- prepares a new will
- destroys the original copy
- in writing, indicates an intention to revoke the will, with witnesses
- in all but a few cases, marries after preparing it

A will is almost always invalid if the will-maker marries after it is signed. It is essential to have a new will prepared after marriage. Unlike marriage, entering into a common-law relationship after making a will does not affect the validity of that will.

If the maker of a will divorces after it is prepared, the document will be interpreted as if their former spouse died before them. Similarly, if the will-maker's common-law relationship is terminated after the will is made, it will be interpreted as if their former common-law partner died before them. This means that even if the person left property to their now former spouse or common-law partner in the will, the former spouse or partner will not receive it. If a will-maker wishes to leave property to a spouse or common-law partner despite any future divorce or end of the common-law relationship, their will must clearly say so. Under this part of *The Wills Act*, termination of a common-law relationship means, for couples who have registered their relationship with the Vital Statistics Agency, that the end of the relationship has been similarly registered. For couples who

have not registered, termination happens after they have lived separate and apart for at least three years.

It is important to know wills are not interpreted in this way when spouses separate, even if they have been separated for many years or are involved in divorce proceedings when one spouse dies. The separated spouse can still receive any bequests left to him or her in the other spouse's will. Separated spouses must take steps to revise or revoke their wills if they want to limit the extent to which their spouse can inherit from their estate.

ASSETS OUTSIDE AN ESTATE

Jointly Owned Property

People can jointly own real estate (*real property*), such as their family home, in two different ways: as *tenants-in-common* or as *joint tenants*. The way property is owned affects what happens to it when one of the owners dies.

Most spouses own their family home as joint tenants. Many common-law partners do as well. If one owner (*joint tenant*) dies, the survivor automatically becomes the sole owner of the property. This occurs regardless of any provisions in a will. Certain documents must be filed with the local Land Titles Office to change the certificate of title for jointly owned property from the names of both joint tenants to the name of the survivor.

Property can also be jointly owned as tenants-in-common. When property is owned this way, each owner (*tenant-in-common*) can state in a will what to do with his or her share. If an owner dies with no will, on death his or her share of the property becomes part of the estate and will be distributed according to law. His or her share of the property does not automatically go to the other joint owner. A surviving spouse or common-law partner may still, however, have the right under *The Homesteads Act* to live in the marital home for life (See Property Rights On Death on page 94).

Spouses or common-law partners may jointly own other assets, such as bank accounts or term deposits. As with a home owned as joint tenants, when one spouse or common-law partner dies, the survivor becomes the owner of the entire asset.

Most assets jointly owned by spouses or common-law partners automatically become the property of the survivor when one of them dies. As a result, the assets never form part of the deceased's estate and so cannot be left to someone else through a will. Any provision in a will doing so is of no effect. A will can only direct who receives assets that form part of a deceased person's estate.

Other Assets Outside an Estate

Another type of asset that often does not fall into an estate is death benefits under a life insurance policy. When benefits are payable to a named beneficiary, the benefits do not form part of the estate. Only if the beneficiary of the policy is the deceased person's estate do the death benefits go to the estate and form part of the assets dealt with in the will.

Many people also sign forms naming beneficiaries for registered retirement savings plans (RRSP) (*designation of beneficiary forms*). Unlike wills, these designation of beneficiary forms are not automatically revoked or cancelled by a future marriage, divorce or common-law relationship. A lawyer should be consulted to determine if the will should provide how RRSPs are to be distributed.

PROPERTY RIGHTS ON DEATH

A number of pieces of legislation become important to a family once a spouse or common-law partner has died, even if there is a will. This section outlines the legislation that will affect property rights when a death occurs.

The Homesteads Act

The Homesteads Act gives the surviving spouse or common-law partner who has homestead rights, the right to live in the family home (*homestead*) for the rest of his or her life, even if the property was owned only by the deceased spouse or partner. To qualify as a common-law partner under *The Homesteads Act*, the couple must have either registered their relationship with the Vital Statistics Agency or they must have cohabited in a conjugal relationship for at least three years. In the case of a family farm, the homestead includes not only the farm dwelling, but also up to 320 acres of land. This is known as a *life estate* in the home, and exists no matter what the will of the deceased person provides. This protection remains in place even if the will of the deceased spouse or common-law partner leaves little or nothing to the survivor. The claims of creditors, however, can affect this right. It is important to know that only one spouse or common-law partner at a time can have homestead rights in a particular home, and a second spouse or partner will not acquire these rights until the homestead rights of a previous spouse or common-law partner are properly dealt with, for example by the first spouse or common-law partner signing a written release of their rights.

The Family Property Act

The Family Property Act sets out the rules for dividing the value of family property between spouses or common-law partners when they separate, as well as when one spouse or partner dies. To qualify as common-law partners under this act, a couple must have either registered their relationship with the Vital Statistics Agency or have cohabited in a conjugal relationship for at least three years. Generally speaking, family property is any property that the couple acquired while they were married or cohabiting and living together, regardless of which member of the couple owns the property.

Both spouses or common-law partners have the right to an equal share of the value of their family property. If a spouse or common-law partner is unhappy with the assets left to them in the other's will, he or she may wish to consider asking the court for an *accounting* and *equalization* of family property. An accounting involves preparing a complete list of each spouse's or partner's assets (including their value) and debts. The court will determine the total value of the assets each spouse or common-law partner must account for, and how much the spouse or partner with more assets will have to pay the other so each will have an equal share of family property. This is called an *equalization payment.*

The survivor's share and any equalization payment owing will be calculated in much the same way as when spouses or common-law partners separate (See Chapter 9, Property). If the spouses or common-law partners were separated when one died, the family property calculations will be as of the date of separation. If the spouses or common-law partners were not separated, then the date of death of the deceased spouse or partner will be used.

Unlike an accounting and equalization on breakdown of the marriage or common-law relationship, a court has no discretion to order that the value of assets be shared unequally on death. As well, a surviving spouse or common-law partner does not have to account for

or share certain assets with the estate of the deceased spouse or partner, even if these assets would have been divided had they been separating. For example, if spouses owned their home in joint tenancy, the surviving spouse will become the sole owner of the home on the death of the other spouse. They will not have to account for the value of the home, and will be entitled to own the home over and above their entitlement to half of the value of their family property. Similarly, a surviving spouse or common-law partner will receive any pension survivor's benefits or, if the beneficiary, life insurance proceeds payable on the death of the other spouse or partner, without having the funds taken into account in the family property calculation.

If there are insufficient assets in an estate to meet an equalization payment owed to the surviving spouse or common-law partner, other beneficiaries of the estate may have to contribute to make up the shortfall. This may also apply to persons who received certain benefits from the deceased person outside their will (such as a named beneficiary under a life insurance policy).

An application for an accounting and equalization of family property after the death of one spouse or common-law partner must be made (with limited exceptions) within six months of the granting of *letters probate* of the deceased's will, or if the deceased left no will, the granting of *letters of administration*. If the surviving spouse or common-law partner had already applied to court for an accounting and equalization of family property when the other spouse or partner died, they need not re-apply.

INHERITANCE WHERE THERE IS NO WILL

The Intestate Succession Act sets out how the property or estate of a person who dies without a will (*intestate*) must be distributed.

If there is no will, the surviving spouse widow or widower, or the surviving common-law partner will usually receive the entire estate. This occurs if:

- the deceased left no descendants such as children or grandchildren
- all the deceased's descendants are also descendants of the surviving spouse or common-law partner
- the estate is worth $50,000 or less

To qualify as common-law partners under *The Intestate Succession Act*, a couple must have either registered their common-law relationship with the Vital Statistics Agency or they must have cohabited in a conjugal relationship for either at least three years or at least one year and they have a child together. If a person dies leaving both a spouse and one or more common-law partners, the one whose relationship with the deceased was most recent will have priority over any others. However, this priority cannot stop another spouse or common-law partner from applying for an accounting and equalization of assets under *The Family Property Act*, as described above.

If there are descendants who are not also descendants of the surviving spouse or common-law partner (such as children from another marriage), the whole estate does not automatically go to the surviving spouse or partner. In those cases, the surviving spouse or partner will receive the first $50,000 or half of the estate, whichever is worth more, and half of the remainder. This means a surviving spouse or partner will always receive at least 75 per cent of the estate.

If the entire estate is not going to the surviving spouse or common-law partner because the deceased left children from another relationship, all of the deceased's children will share the rest of the estate equally. At most, the deceased's children will share 25 per cent of the estate.

If the deceased left no spouse or common-law partner, his or her children will share the estate equally. If a person dies without a spouse, common-law partner or descendants, his or her estate will be distributed to the closest relatives. For someone to receive part of an estate where there is no will, he or she must live 15 days longer than the person who died.

The Intestate Succession Act also provides that if spouses or common-law partners are separated and

- in the case of married spouses, either has applied to court for a divorce
- in the case of common-law partners who had registered their relationship with the Vital Statistics Agency, either or both had registered the end of the relationship before one of them died
- in the case of common-law partners who had not registered their relationship with the Vital Statistics Agency, they had lived separate and apart for at least three years
- they have already made a final division of their property

the surviving spouse or common-law partner will not receive a share under the act. In these circumstances, the survivor may still be entitled to apply for an accounting and equalization of assets under *The Family Property Act* (if property matters have not already been dealt with) and may also have rights under *The Homesteads Act*.

Unless a person leaves a valid will, his or her estate will be dealt with under *The Intestate Succession Act*. It is important to remember that through a will a person can leave parts of an estate to a common-law partner or to more distant relatives who would not inherit under that act, or to charities, churches, friends and so on.

FINANCIAL SUPPORT FROM THE ESTATE FOR DEPENDANTS

The Dependants Relief Act protects family members of a deceased person who were dependent upon him or her for support.

The court can be asked to make a maintenance order if the will does not provide enough support for dependent family members or in cases where there is no will.

The deceased's spouse, common-law partner, children, parents, grandparents, brothers, sisters, or children to whom the deceased acted as a parent, and former spouses or common-law partners with maintenance orders or agreements can claim support from the estate under the act. To qualify as common-law partners under *The Dependants Relief Act*, a couple must either have registered their common-law relationship with the Vital Statistics Agency or they must have cohabited in a conjugal relationship either for at least three years or for one year and they have a child together. The court has the power to change the terms of a will to allow for support of the family members who were financially dependent on the deceased.

Adult children, parents, brothers, sisters, grandparents and grandchildren of a deceased person must be able to show that they were substantially dependent on that person for financial support. The act allows people in financial need to apply for maintenance. It does not provide a way for financially independent family members who think they should have been left money or property by a deceased relative to ask the court for part of the estate.

The maintenance for dependent family members that a judge orders be paid from an estate may be in the form of regular (*periodic*) payments (such as monthly), a lump sum payment or a transfer of property.

RIGHTS OF SURVIVING FAMILY MEMBERS UNDER *THE FATAL ACCIDENTS ACT*

If someone has been killed in an accident because of the wrongful or negligent act of a third party, that third party can be sued in court. The party may be ordered to pay compensation to the person's surviving spouse or common-law partner, children, grandchildren, parents, sister or brother. To qualify as common-law partners under *The Fatal Accidents Act*, a couple must either have registered their common-law relationship with the Vital Statistics Agency or they must have cohabited in a conjugal relationship either for at least three years or for one year and they have a child together. In any case, the couple must have been cohabiting immediately before the one partner's death.

The Fatal Accidents Act also makes it clear that the term "parents" includes grandparents, step-parents and people who stood in place of a parent (*in loco parentis*) to the deceased person. The term "child" includes a step-child and one to whom the deceased person stood in place of a parent.

The Workers Compensation Act and *The Manitoba Public Insurance Corporation Act* each provide for compensation payments to dependant family members of a person who has died under circumstances covered by that act.

PENSION BENEFITS ON DEATH

Canada Pension Plan

Spouses, common-law partners and dependent children may be eligible for survivor's pension benefits under the Canada Pension Plan on the death of a spouse or parent where the deceased contributed to the plan for at least three years after turning 18. A single lump sum death benefit payment may also be made to the estate of the deceased.

The method of determining eligibility for benefits is complicated. For more information about benefits and what is needed to qualify for Canada Pension Plan death benefits, contact Social Development Canada in one of the following ways:

- In person

  Winnipeg 391 York Avenue
  1122 Henderson Highway
  1031 Autumnwood Drive
  3338 Portage Avenue

  Brandon 1039 Princess Avenue

- By telephone

  1-800-277-9914 toll free (English)
  1-800-277-9915 toll free (French)
  1-800-255-4786 toll free (TTY)

- By mail

  Social Development Canada
  Income Security Programs
  P.O. Box 818 Stn. Main
  Winnipeg, MB R3C 2N4

- Through the Internet

  www.sdc.gc.ca/

Canada Pension Plan death benefits should be applied for as soon as possible. Waiting may result in a loss of benefits.

Pension Benefits Legislation

■ *The Pension Benefits Act*

The Pension Benefits Act of Manitoba applies to pension plans sponsored by an employer for employees in Manitoba. It does not apply to the Canada Pension Plan, to federal government employees, to federally regulated pension plans or to personal retirement savings (such as an RRSP).

If a member of a pension plan to which the act applies dies while still employed, the member's spouse or common-law partner is entitled to pension benefits based on the total amount accumulated in a plan. The spouse or partner will not receive a cash payment, but will receive benefits in the form of payments from a life annuity. Payments from this annuity may begin immediately or when the surviving spouse or partner retires.

When a member of a pension plan to which the act applies retires, his or her pension benefits are payable in the form of a *joint pension* if the member is married or living with a common-law partner when the payments begin. If a plan member or his or her spouse or common-law partner dies after the member retires, the survivor is entitled to pension benefits at a level of at least two-thirds of the original pension amount. This provides spouses and common-law partners with a monthly pension guaranteed for the lives of both of them. It also provides protection for survivors by guaranteeing they receive a set pension income after the death of the other spouse or partner. This protection may be given up by completing a *waiver form*.

See Chapter 9, Property, for more information about a proposed new law that, once it is passed by the Manitoba legislature, would change a number of provisions of *The Pension Benefits Act*, including the amount of any survivor's pension.

If the plan member dies before retirement, death benefits will be payable to the member's spouse or common-law partner, either as an immediate or deferred annuity plan or by transfer to certain types of locked-in investments allowed under *The Pension Benefits Act*. If the plan member did not have a legal spouse or common-law partner, a lump sum payment may be made to a named beneficiary or to the member's estate.

For more information about benefits and to see if a pension plan falls under this act, contact:

Pension Commission of Manitoba
1004 - 401 York Avenue
Winnipeg MB R3C 0V8
Phone: 945-2740
Fax: 948-2375
Toll free: 1-800-282-8069 (Ext. 2740)

■ The Federal *Pension Benefits Standards Act, 1985*

The *Pension Benefits Standards Act, 1985* applies to most federally regulated pension plans (Ex: the airlines and railways) and provides protection to spouses and common-law partners similar to that in Manitoba's *Pension Benefits Act*.

For more information about benefits under this federal act and to see if it applies to a pension plan, contact:

Office of the Superintendent of
Financial Institutions of Canada
255 Albert Street
Ottawa ON K1A 0H2
Toll free: 1-800-385-8647
Internet: www.osfi-bsif.gc.ca

DEATH OF A COMMON-LAW PARTNER

Before June 30, 2004, a common-law partner was not entitled to receive the same property from the estate of his or her deceased partner as a legally married spouse would under *The Marital Property Act* (now called *The Family Property Act*) or *The Intestate Succession Act*, regardless of how long the relationship lasted. These laws were changed, along with many other laws dealing with property rights, as part of *The Common-Law Partners' Property and Related Amendments Act*. See the sections of this Chapter on *The Family Property Act* and *The Intestate Succession Act* for information on how those laws apply to common-law partners.

A common-law partner can also ask a judge to order support from the deceased's estate under *The Dependants Relief Act* if:

- the parties lived together for at least one year and had a child together
- they lived together for at least three years
- they registered their common-law relationship with the Vital Statistics Agency
- they were either living together when the death took place
- they had lived together within three years of the death

A claim for support from the estate can also be made by a common-law partner who was entitled to support from the deceased under an agreement or court order in place at the time of the death.

A common-law partner is entitled to receive any property left to him or her in a partner's will or otherwise (Ex: life insurance benefits, funds in an RRSP). If the partners jointly owned property, the surviving common-law partner may become the sole owner on his or her partner's death.

Common-law partners may also be entitled to survivor's benefits under the Canada Pension Plan, *The Pension Benefits Act* of Manitoba and/or the federal *Pension Benefits Standards Act, 1985*.

A common-law partner may also be able to claim rights to specific property of his or her deceased partner, even if he or she doesn't qualify as a common-law partner under any of the laws described above. It must be proved that the partner contributed to acquiring, improving or maintaining the property in question, and should therefore be compensated for the contribution. To claim a right to property in these circumstances, an application to court is necessary.

CHILDREN OF UNMARRIED PARENTS

Children of unmarried parents have the same rights as those of married parents to inherit from both their parents, and from other relatives.

The Intestate Succession Act, *The Dependants Relief Act* and *The Fatal Accidents Act* all apply to the children of unmarried parents.

TAXES ON INHERITANCE

There are currently no provincial taxes on inheritances. Income tax may be payable by the person's estate.

CHAPTER 16

IMPORTANT ADDRESSES AND PHONE NUMBERS

This chapter includes all the numbers noted in the book. As of March, 2005, all the numbers were accurate and current.

If you are having trouble finding provincial or federal government phone numbers, please contact Manitoba Government Inquiry in Winnipeg at 945-3744; or toll free at 1-866-626-4862.

SHELTERS AND RESOURCES FOR VICTIMS OF ABUSE

24 Hour Crisis Lines

Winnipeg Crisis Line
942-3052 (TDD-accessible)

Province-Wide Information/Crisis Line
Toll free: 1-877-977-0007 This number will automatically direct callers to the nearest shelter.

SHELTERS

Winnipeg
Ikwe-Widdjiitiwin
Phone: 987-2780 (24 hours)
Toll free: 1-800-362-3344

Osborne House
Phone: 942-3052 (24 hours)
TTY: 942-5209

Brandon
YWCA Westman Women's Shelter
Phone: 727-3644

Dauphin
Parkland Crisis Shelter
Phone: 638-9484

Portage la Prairie
Portage Women's Shelter
Phone: 239-5233

Selkirk
Nova House
Phone: 482-1200

Steinbach
Eastman Crisis Centre
Phone: 346-0028

The Pas
The Pas Committee for Women in Crisis
Phone: 623-5497

Thompson
Thompson Crisis Centre
Phone: 778-7273

Winkler
South Central Committee on Family Violence
Phone: 325-9800

OTHER SERVICES

Winnipeg

Alpha House Project
Phone: 982-2011

Domestic Violence Support and Legal Services
A Woman's Place
200-323 Portage Avenue
Winnipeg MB R3B 2C1
Phone: 940-6624
Fax: 940-1971
E-mail: iwcs@mts.net

Winnipeg Children's Access Agency
Phone: 284-4170

Elder Abuse Resource Centre
Phone: 956-6449

Elizabeth Hill Couple's Counselling
Phone: 956-6562
Toll free: 1-866-672-3422

Evolve
Phone: 784-4070

Fort Garry Women's Resource Centre
Phone: 477-1123

Immigrant Women's Counselling Services
Room 200 – 323 Portage Avenue
Phone: 940-2172

The Laurel Centre
Phone: 783-5460

L'Entre-Temps des Franco-Manitobaines
Phone: 925-2550
Toll free: 1-800-668-3836

Spirit of Peace Program
Ma Mawi Wi Chi Itata Centre, Inc.
Phone: 925-0349
Phone: 925-0300 McGregor Street
Phone: 925-0348 Ellice Avenue
Phone: 925-0349 Anderson Avenue

Men's Resource Centre
Phone: 956-9528
Toll free: 1-866-672-3422

Native Women's Transition Centre
Phone: 989-8240

North End Women's Centre
Phone: 589-7347

Nor'West Co-op Community Health Centre
Phone: 940-2080

Pluri-Elles Centre de Femmes
Phone: 233-1735
Toll free: 1-800-207-5874

WISH (Women in Second-Stage Housing)
Phone: 275-2600

Manitoba Justice – Crime Victim Services
Phone: 945-6851
Toll free: 1-800-282-8069 (Ext. 6851)

Ashern, Eriksdale, Lundar

Lakeshore Women's Resource Centre
Phone: 768-3016

Brandon

Brandon Access Exchange Service
Phone: 729-8115

The Counselling Centre – Men's Program
Phone: 726-8706

Manitoba Justice – Crime Victim Services (Brandon and Area)
Phone: 726-6515

Samaritan House Ministries
Phone: 726-0758

The Women's Centre
Phone: 726-8632
Toll free: 1-866-255-4432

YWCA of Brandon – Couple's Program
Phone: 571-3680

Dauphin

Manitoba Justice – Crime Victim Services (Dauphin and Area)
Phone: 622-5080

Flin Flon
Women's Safe Haven/Resource Service
Phone: 681-3105

Gimli, Riverton
Interlake Women's Resource Centre
Phone: 642-8264

Morris
Manitoba Justice – Crime Victim Services
(Morris and Area)
Phone: 746-8249

Norman Region
Manitoba Justice – Crime Victim Services
(The Pas and Area)
Phone: 627-8483

Portage la Prairie
Manitoba Justice – Crime Victim Services
(Portage and Area)
Phone: 239-3378

Selkirk
Manitoba Justice – Crime Victim Services
(Selkirk and Area)
Phone: 785-5213

Interlake Eastman Visitation Service
Toll free: 1-866-886-6153

Snow Lake
Snow Lake Centre on Family Violence
Phone: 358-7141

Swan River
Swan Valley Crisis Centre
Phone: 734-9368

Thompson Region

Thompson RCMP
Phone: 778-7273

Thompson Access Exchange Centre
Phone: 778-1206

Manitoba Justice – Crime Victim Services
(Thompson and Area)
Phone: 677-6368

CHILD AND FAMILY SERVICES AGENCIES

Main offices and phone numbers are listed under four sections:

General Authority Agencies
Northern First Nations Agencies
Southern First Nations agencies
Metis Agency

Many of the agencies listed below have other offices. Check with the agency's main office for current listings.

General Authority Agencies

Winnipeg, Rural and Northern Child and Family Services (Regional Office)
Winnipeg Child and Family Services
Executive Office
404 - 1 Wesley Avenue
Winnipeg MB R3C 4C6
Phone: 944-4438
Fax: 944-4395

Winnipeg Child and Family Services - Central Area
2nd Floor - 835 Portage Avenue
Winnipeg MB R3G 0N6
Phone: 944-4200
Fax: 944-4250

Winnipeg Child and Family Services - East Area
222 Provencher Boulevard
Winnipeg MB R2H 0G5
Phone: 944-4288
Fax: 944-4666

Winnipeg Child and Family Services - Northwest Area
1386 Main Street
Winnipeg MB R2W 3V1
Phone: 944-4031
Fax: 944-4022 or 944-4006

Winnipeg Child and Family Services -
Southwest Area
6 - 677 Stafford Street
Winnipeg MB R3M 2X7
Phone: 944-4360
Fax: 944-4521

Winnipeg Child and Family Services -
Intake Services
835 Portage Avenue
Winnipeg MB R3G 0N6
Phone: 944-4200
Fax: 944-4250
Toll free: 1-888-834-9767
After-hours (emergency calls only): 944-4050

Manitoba Family Services -
Eastman Regional Office
Provincial Building
Box 50 - 20 1st Street South
Beausejour MB R0E 0C0
Phone: 268-6154
Fax: 268-6222

Manitoba Family Services -
Interlake Regional Office
Selkirk Mental Health Centre
3rd Floor,
Administration Building - Box 9600
825 Manitoba Avenue
Selkirk MB R1A 2B5
Phone: 785-5100
Fax: 785-4882

Manitoba Family Services -
Parkland Regional Office
309, 27 - 2nd Avenue SW
Dauphin MB R7N 3E5
Phone: 622-2035
Fax: 638-3278

Manitoba Family Services -
Norman Regional Office
102 – 143 Main Street
Flin Flon MB R8A 1K5
Phone: 687-1700
Fax: 687-1708

Manitoba Family Services -
Thompson Regional Office
Box 5 - 59 Elizabeth Drive
Thompson MB R8N 1X4
Phone: 677-6570
Fax: 677-6517

Jewish Child and Family Services
C200 - 123 Doncaster Street
Winnipeg MB R3N 2B2
Phone: 477-7430
Fax: 477-7450

Child and Family Services of Central Manitoba
Main Office
25 - 3rd Street SE
Portage la Prairie MB R1N 1N1
Phone: 857-8751
Fax: 239-1413

Child and Family Services
of Western Manitoba
800 McTavish Avenue
Brandon MB R7A 7L4
Phone: 726-6030
Fax: 726-6775
Toll free: 1-800-483-8980

Churchill Child and Family Services
Churchill Regional Health Authority Inc.
Churchill MB R0B 0E0
Phone: 675-8322
Fax: 675-2445

Northern First Nations Agencies
Awasis Agency of Northern Manitoba
39 Nickel Road
Thompson MB R8N 0Y5
Phone: 677-1500 After hours: 778-6341
Fax: 778-8428
Toll free: 1-800-667-4734

Cree Nation Child
and Family Caring Agency
Otineka Mall, P.O. Box 10130
Opaskwayak MB R0B 2J0
Phone: 623-7456
Fax: 623-3847

Island Lake First Nations Family Services
General Delivery
Garden Hill MB R0B 0T0
Phone: 456-2015
Fax: 456-2641
Toll free: 1-888-242-0605

Kinosao Sipi Minisowin Agency
Norway House First Nation
Box 640
Norway House MB R0B 1B0
Phone: 359-4551
Fax: 359-6013

Nisichawayasihk Cree Nation Family and Community Services
Nelson House First Nation
Phone: 484-2604

Southern First Nations Agencies

Peguis Child and Family Services
P.O. Box 610
Peguis MB R0C 3J0
Phone: 645-2101
Fax: 645-2558

Peguis Child and Family Services
Winnipeg Office
Unit 6-350 Keewatin Street
Winnipeg MB R2X 2R9
Phone: 632-5404
Fax: 632-7226

Anishinaabe Child and Family Services
Main Office
Fairford First Nation
General Delivery
Fairford MB R0C 0X0
Phone: 659-4546
Fax: 659-5877

Dakota Ojibway Child and Family Services
702 Douglas Street
Brandon MB R7A 7B2
Phone: 729-3650
Fax: 728-1806
Toll free (after hours only): 1-800-263-6237

Intertribal Child and Family Services
P. O. Box 610
Peguis MB R0C 3J0
Phone: 645-2049, 645-2101
After hours: 645-2000
Fax: 645-2558

Sagkeeng Child and Family Services Inc.
P. O. Box 700
Pine Falls MB R0E 1M0
Phone: 367-2215
Fax: 367-8510
Toll free: 1-877-367-4020

Southeast Child and Family Services
4th Floor, 360 Broadway
Winnipeg MB R3C 0T6
Phone: 947-0011
Fax: 947-0009

West Region Child and Family Services
Rolling River First Nation
Box 280
Erickson MB R0J 0P0
Phone: 636-6100
Fax: 636-6158
Toll free: 1-866-636-6100
Dauphin Office Toll free: 1-888-333-5518

Metis Agency

Metis Child, Family and Community Services
1261 Main Street
Winnipeg MB R2W 5G9
Phone: 697-1118
Fax: 697-0606
Toll free: 1-866-834-4242
Website: www.mnaf.mb.ca/pages/departments/mcfs/agency.php

COURT OFFICES

⚖ Winnipeg Court Offices

Court of Appeal
Main Floor - 408 York Avenue
Winnipeg MB R3C 0P9
Phone: 945-2647
Fax: 948-2072

Court of Queen's Bench
Main Floor - 408 York Avenue
Winnipeg MB R3C 0P9

General (includes family, civil and criminal matters)
Phone: 945-0344
Fax: 948-2369

Probate (Estate) Matters
Phone: 945-3184
Fax: 948-2369

227 Provencher Boulevard
St. Boniface MB R2H 0G4
Phone: 945-8010
Fax: 945-5562

⚖ Provincial Court

Criminal Division
Main Floor - 408 York Avenue
Winnipeg MB R3C 0P9
Phone: 945-3454
Fax: 945-7130

Highway Traffic Matters
373 Broadway
Winnipeg MB R3C 0T9
Phone: 945-3156
Fax: 948-2023

All Winnipeg and St. Boniface court offices:
Toll free: 1-800-282-8069
(The extension number for a particular office is the last four digits of its phone number.)

⚖ Regional Court Offices

⚖ Brandon

Court of Queen's Bench
1104 Princess Avenue
Brandon MB R7A 0P9
Phone: 726-6240
Fax: 726-6547

Provincial Court
1104 Princess Avenue
Brandon MB R7A 0P9
Phone: 726-6598
Fax: 726-6995

Maintenance Enforcement
1104 Princess Avenue
Brandon MB R7A 0P9
Phone: 726-6237
Fax: 726-6546

⚖ Dauphin

Court of Queen's Bench
and Provincial Court
Court Office
114 River Avenue W.
Dauphin MB R7N 0J7
Phone: 622-2200
Fax: 622-2099

⚖ Flin Flon

Court of Queen's Bench
and Provincial Court
Court Office
104-143 Main Street
Flin Flon MB R8A 1K2
Phone: 687-1672
Fax: 687-1673

⚖ Minnedosa

Court of Queen's Bench
and Provincial Court
Court Office
70 - 3rd Avenue SW, Box 414
Minnedosa MB R0J 1E0
Phone: 867-2238
Fax: 867-2440

Morden

Court of Queen's Bench
and Provincial Court
Court Office
301 Wardrop Street
Morden MB R6M 1X6
Phone: 822-2880
Fax: 822-2883

Portage la Prairie

Court of Queen's Bench
20-3rd Street SE
Portage la Prairie MB R1N 1M9
Phone: 239-3383
Fax: 239-3410

Provincial Court
25 Tupper Street N.
Portage la Prairie MB R1N 3K1
Phone: 239-3337
Fax: 239-3402

Selkirk

Court of Queen's Bench
and Provincial Court
Court Office
101 - 235 Eaton Avenue
Selkirk MB R1A 0W7
Phone: 785-5338
Fax: 785-5125

Steinbach

Provincial Court
Court Office
284 Reimer Avenue, Box 21480
Steinbach MB R5G 1S7
Phone: 346-6070
Fax: 326-5101

Swan River

Court of Queen's Bench
and Provincial Court
Court Office
201 - 4th Avenue S., Box 206
Swan River MB R0L 1Z0
Phone: 734-2252
Fax: 734-9544

The Pas

Court of Queen's Bench
and Provincial Court
Court Office
300-3rd Street E., Box 1259
The Pas MB R9A 1L2
Phone: 627-8428
Fax: 623-6528

Thompson

Court of Queen's Bench
and Provincial Court
Court Office
59 Elizabeth Drive, Box 34
Thompson MB R8N 1X4
Phone: 677-6757
Fax: 677-6584

Maintenance Enforcement
B-1, 59 Elizabeth Road, Box 12
Thompson MB R8N 1X4
Phone: 677-6758
Fax: 677-0655
Toll free: 1-866-804-5830

Virden

Court of Queen's Bench
and Provincial Court
Court Office
232 Wellington Street W., Box 1478
Virden MB R0M 2C0
Phone: 748-4289
Fax: 748-2980

Manitoba, together with the federal government, offers bilingual services at the following Bilingual Service Centres:

Urban Region
Centre La Vérendrye
100-614 Des Meurons Street
Winnipeg MB R2H 2P9
Phone: 945-6220

Red River Region
427 Sabourin Street
St. Pierre-Jolys MB R0A 1V0
Phone: 433-3340

Mountain Region
Centre Dom Benoît
51 Rodgers Street
Notre-Dame-de-Lourdes MB R0G 1M0
Phone: 248-7270

Hours of Operation 8:30 am to 4:30 pm
Monday to Friday
Toll free: 1-866-267-6114
Website: www.csbsc.mb.ca

FAMILY SERVICES AND HOUSING

Employment and Income Assistance

1st Floor - 111 Rory Street
Winnipeg MB R3B 1A1
Intake Inquiry Line: 948-4000
Fax: 948-4048
TTY: 948-4532
Toll free: 1-800-282-8069

LEGAL AID OFFICES

Winnipeg Legal Aid Offices

Legal Aid Manitoba
Administrative and Winnipeg Area Office
402 - 294 Portage Avenue
Winnipeg MB R3C 0B9
Phone: 985-8500
Fax: 944-8582
Toll free: 1-800-261-2960

Aboriginal Centre Law Office
416 – 294 Portage Avenue
Winnipeg MB R3C 0B9
Phone: 985-5230
Fax: 985-5237
Toll free: 1-800-300-2307

Family Law Centre
Room 300-294 Portage Avenue
Winnipeg MB R3C 0B9
Phone: 985-8550
Fax: 956-4146
Toll free: 1-800-766-2148

Child Protection Law Office
Room 300-294 Portage Avenue
Winnipeg MB R3C 0B9
Phone: 985-8566
Fax: 985-5224
Toll free: 1-800-839-7946

Collaborative Law Office
Room 607-294 Portage Avenue
Winnipeg MB R3C 0B9
Phone: 985-9732

Public Interest Law Centre
610-294 Portage Avenue
Winnipeg MB R3C 0B9
Phone: 985-8540
Fax: 985-8544
Toll free: 1-800-261-2960

Regional Legal Aid Offices

Westman Community Law Centre
(Brandon Area Office)
236-11th Street
Brandon MB R7A 4J6
Phone: 729-3484
Fax: 726-1732
Toll free: 1-800-876-7326

Parklands Community Law Centre
(Dauphin Area Office)
31 3rd Avenue N.E.
Dauphin MB R7N 0Y5
Phone: 622-7000
Fax: 622-7029
Toll free: 1-800-810-6977

Northlands Community Law Centre
(The Pas/Thompson Area Office)
236 Edwards Avenue; Box 2429
The Pas MB R9A 1M2
Phone: 627-4820
Fax: 627-4838
Toll free: 1-800-268-9790

Thompson Community Law Centre3 Station Road
Thompson MB R8N 0N3
Phone: 677-1211
Fax: 677-1220
Toll free: 1-800-665-0656

IMPORTANT ADDRESSES AND PHONE NUMBERS BY CHAPTER

Chapter 1 - Legal Information and Legal Advice

The Law Phone-In and
Lawyer Referral Program
Community Legal Education Association
501-294 Portage Avenue
Winnipeg MB R3C 0B9
Phone: 943-2305
Toll free: 1-800-262-8800
Website: www.communitylegal.mb.ca

To purchase copies of Manitoba government legislation, contact:

Statutory Publications
200 Vaughan Street
Winnipeg, MB R3C 1T5
Phone: 945-3101
Fax: 945-7172
Toll free: 1-800-321-1203

To access unofficial versions of Manitoba government legislation on the Internet, go to: www.gov.mb.ca/laws

To access federal government legislation on the Internet, go to:
www.canada.justice.gc.ca and click on "laws"

To purchase copies of federal government legislation, contact the federal department that published the act or regulation.

For other federal government publications, contact:

Publishing and Depository Services
Public Works and Government
Services Canada
Ottawa, ON K1A 0S5
Toll-free: 1-800-661-2868

Chapter 2 - The Court System and Procedures and Alternate Dispute Resolution

Information on Manitoba's court system is available on the Internet at:
www.manitobacourts.mb.ca

For information on mediation, contact:

Family Conciliation
2nd Floor 379 Broadway
Winnipeg MB R3C 0T9
Phone: 945-7236
Fax: 948-2142
Toll free: 1-800-282-8069 (Ext. 7236)
Website: www.gov.mb.ca/fs/childfam/family_conciliation.html
Brandon: 726-6336
Toll free: 1-800-230-1885
Dauphin: 622-2318
Thompson: 677-6497
The Pas: 627-8221
Flin Flon: 687-1730

Family Mediation Canada
528 Victoria Street North
Kitchener ON N2H 5G1
Phone: 1-519-585-3118
Fax: 1-519-585-3121
E-mail: fmc@fmc.ca
Website: www.fmc.ca

Family Mediation Manitoba
P.O. Box 2369
Winnipeg MB R3C 4A6
Website: www.fmm.winnipeg.mb.ca

Legal Aid Manitoba
Collaborative Law Office
607 – 294 Portage Avenue
Winnipeg MB R3C 0B9
Phone: 985-9732

Chapter 3 - Marriage

For information on the requirements for marriage, contact:

Vital Statistics Agency
254 Portage Avenue
Winnipeg MB R3C 0B6
Phone: 945-3701
Service en français: 945-5500
Fax: 948-3128
Toll free: 1-800-282-8069 (Ext. 3701)
E-mail: vitalstats@gov.mb.ca
Website: www.gov.mb.ca/cca/vital

For information about pension rights and benefits, contact:

Pension Commission of Manitoba
1004 - 401 York Avenue
Winnipeg MB R3C 0V8
Phone: 945-2740
Fax: 948-2375
Toll free: 1-800-282-8069 (Ext. 2740)
(also referred to in Chapter 9, Property, and Chapter 15, Death in the Family)

Office of the Superintendent of Financial Institutions of Canada
255 Albert Street
Ottawa ON K1A 0H2
Toll free: 1-800-385-8647
Website: www.osfi-bsif.gc.ca
(also referred to in Chapter 9, Property, and Chapter 15, Death in the Family)

Chapter 5 - Custody

Information on the status of federal bills is available at www.parl.gc.ca/LEGISINFO

Winnipeg Children's Access Agency
Phone: 284-4170
Brandon Access Exchange Service
Phone: 729-8115
Thompson Access Exchange Centre
Phone: 778-1206

Interlake Eastman Visitation Service
(Selkirk)
Toll free: 1-866-886-6153

To register for, or learn more about the government's free parent information program, contact:

For the Sake of the Children
Parent Information Program
Winnipeg: 945-4257
Toll free: 1-800-282-8069 (Ext. 4257)
Brandon: 726-6336
Toll free: 1-800-230-1885
Dauphin: 622-2318
Flin Flon: 687-1730
The Pas: 627-8221
Thompson: 677-6497

Chapter 7 - Child Support

For information about the *Federal Child Support Guidelines*, contact:
Federal Department of Justice
Toll free: 1-888-373-2222
Website: www.canada.justice.gc.ca

An information booklet called *A Guide to Changing Child Support Orders in Manitoba* is available on the Internet at: www.gov.mb.ca/justice/family/changembsupportorder

Child Support Recaculation Service
2nd Floor 373 Broadway
Winnipeg MB R3C 4S4
Phone: 945-2293
Fax: 948-2423
Toll-free: 1-800-282-8069 (Ext. 2293)

A list of reciprocating jurisdictions under the Inter-Jurisdictional Support Orders Regulation can be found at: web2.gov.mb.ca/laws/regs/pdf/i060-010.03.pdf

For information about the tax rules regarding child support, contact:
Rulings Directorate
Canada Revenue Agency
320 Queen Street
16th Tower A Place de Ville
Ottawa ON K1A 0L5
Phone: 1-613-957-8953
Fax: 1-613-957-2088

For information about the *Election for Child Support Payments* form (T1157), contact:
Canada Revenue Agency
Phone: 983-6350
Toll free: 1-800-959-8281
Website: www.cra-arc.gc.ca

Chapter 9 - Property

For information about sharing and entitlement to Canada Pension Plan benefits, contact Social Development Canada:

In person

Winnipeg	391 York
	1122 Henderson Highway
	1031 Autumnwood Drive
	3338 Portage Avenue
Brandon	1039 Princess Avenue

By phone
Toll free: 1-800-277-9914 (English)
Toll free: 1-800-277-9915 (French)
Toll free: 1-800-255-4786 (TTY)

By mail
Social Development Canada
Income Security Programs
P.O. Box 818 Stn. Main
Winnipeg MB R3C 2N4

On the Internet
www.sdc.gc.ca/

Contact information for the Pension Commission of Manitoba (regarding provincially regulated pensions) and the Office of the Superintendent of Financial Institutions of Canada (regarding most federally regulated pensions) appears earlier in this Chapter.

Chapter 10 - Family Violence

For domestic violence support and legal services:

A Woman's Place
200 – 323 Portage Avenue
Winnipeg MB R3B 2C1
Phone: 940-6624
Fax: 940-1971
E-mail: iwcs@mts.net

Family Violence Prevention Program
4126 - 300 Carlton Street
Winnipeg MB R3B 2K6
Phone: 945-1709
Fax: 948-2286
Toll free: 1-800-282-8069 (Ext. 1709)
E-mail: cfsd@gov.mb.ca
Website: www.gov.mb.ca/fs/childfam/family_violence_prevention.html

Manitoba Justice
Crime Victim Services Branch
Winnipeg: 945-6851
Brandon and Area: 726-6515
Dauphin and Area: 622-5080
Morris and Area: 746-8249
Portage and Area: 239-3378
The Pas and Area: 627-8483
Thompson and Area: 677-6368
Selkirk and Area: 785-5213
Toll free: 1-866-4VICTIM
(1-866-484-2846)

Chapter 11 - Enforcement of Support, Custody and Access

For information about Manitoba's reciprocal maintenance enforcement or child custody enforcement arrangements with other countries, contact:

Family Law Branch
Manitoba Justice
705 - 405 Broadway
Winnipeg MB R3C 3L6
Phone: 945-0268
Fax: 948-2004
Toll free: 1-800-282-8069 (Ext. 0268)

For information about enforcement of support payments, contact:

Maintenance Enforcement Program
225 - 405 Broadway
Winnipeg MB R3C 3L6
Phone: 945-7133
Fax: 945-5449
Toll free: 1-800-282-8069 (Ext. 7133)
Websites: www.gov.mb.ca/justice/family/payors.html
www.gov.mb.ca/justice/family/recipients.html

For assistance in international child abduction cases, contact:

Foreign Affairs and
International Trade Canada
Phone: 1-613-996-8885
Toll free: 1-800-267-6788

ISS Canada
Suite 714
151 Slater Street
Ottawa ON K1P 5H3
Phone: 1-613-236-6161
Fax: 1-613-233-7306
E-mail: issc@magma.ca
Website: www.issc-ssic.ca

For information on whether The Hague *Convention* is law in a particular country: hcch.e-vision.nl

Child Find Manitoba, Inc.
343-800 Portage Avenue
Winnipeg MB R3G 0N4
Phone: 945-5735
Fax: 948-2461
Toll free: 1-800-532-9135
E-mail: mail@childfind.mb.ca
Website: www.childfind.mb.ca
(Child Find assists with both domestic and international abduction cases.)

For child access services, see the contact information for agencies/exchange services listed earlier in this Chapter.

Chapter 12 - Protection of Children

To report sexual exploitation of children on the Internet, go to: www.cybertip.ca or call toll free: 1-866-658-9022

The Children's Advocate
102-500 Portage Avenue
Winnipeg MB R3C 3X1
Phone: 945-1364
Fax: 948-2278
Toll free: 1-800-263-7146
Website: www.childrensadvocate.mb.ca

For information on the Child Abuse Registry, contact:

Child Protection Branch
201 - 114 Garry Street
Winnipeg MB R3C 4V5
Phone: 945-6967
Fax: 948-2222
Toll free: 1-800-282-8069 (Ext. 6964)

Chapter 13 - Adoption

For information on the Post-Adoption Registry, contact:

Post-Adoption Registry Coordinator
Child Protection Branch
Phone: 945-6964
Fax: 948-2949
Toll free: 1-800-282-8069 (Ext. 6964)
Website: www.gov.mb.ca/fs/childfam/adoption.html

Chapter 14 - Change of Name

For information about changes of name and birth registrations contact:

Vital Statistics Agency
254 Portage Avenue
Winnipeg MB R3C 0B6
Phone: 945-3701
Service en français: 945-5500
Fax: 948-3128
Toll free: 1-800-282-8069 (Ext. 3701)
E-mail: vitalstats@gov.mb.ca
Website: www.gov.mb.ca/cca/vital